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H.B. No. 40

A BILL TO BE ENTITLED

AN ACT

relating to the management of the water resources of the state,
including the protection of instream flows and freshwater inflows.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The heading to Section 5.506, Water Code, is
amended to read as follows:

Sec. 5.506. EMERGENCY SUSPENSION OF PERMIT CONDITION
RELATING TO, AND EMERGENCY AUTHORITY TO MAKE AVAILABLE WATER SET
ASIDE FOR, BENEFICIAL INFLOWS TO AFFECTED BAYS AND ESTUARIES AND
INSTREAM USES.

SECTION 2. Section 5.506, Water Code, is amended by adding
Subsection (a-1) and amending Subsections (b) and (c) to read as
follows:

(a-1) State water that is set aside by the commission to
meet the needs for freshwater inflows to affected bays and
estuaries and instream uses under Section 11.1471(a)(2) may be made
available temporarily for other essential beneficial uses if the
commission finds that an emergency exists that cannot practically
be resolved in another way.

(b) The commission must give written notice of the proposed
action [~~suspension~~] to the Parks and Wildlife Department before the
commission suspends a permit condition under Subsection (a) or
makes water available temporarily under Subsection (a-1) [~~this
section~~]. The commission shall give the Parks and Wildlife

1 Department an opportunity to submit comments on the proposed action
2 [~~suspension~~] for a period of 72 hours from receipt of the notice and
3 must consider those comments before issuing an order implementing
4 the proposed action [~~imposing the suspension~~].

5 (c) The commission may suspend a permit condition under
6 Subsection (a) or make water available temporarily under Subsection
7 (a-1) [~~this section~~] without notice except as required by
8 Subsection (b).

9 SECTION 3. Section 5.701(j), Water Code, is amended to read
10 as follows:

11 (j) The fee for other uses of water not specifically named
12 in this section is \$1 per acre-foot, except that no political
13 subdivision may be required to pay fees to use water for recharge of
14 underground freshwater-bearing sands and aquifers or for abatement
15 of natural pollution. A fee is not required for a water right that
16 is [~~This fee is waived for applications for instream-use water~~
17 ~~rights~~] deposited into the Texas Water Trust.

18 SECTION 4. Section 11.002, Water Code, is amended by adding
19 Subdivisions (15), (16), (17), (18), and (19) to read as follows:

20 (15) "Environmental flow analysis" means the
21 application of a scientifically derived process for predicting the
22 response of an ecosystem to changes in instream flows or freshwater
23 inflows.

24 (16) "Environmental flow regime" means a schedule of
25 flow quantities that reflects seasonal and yearly fluctuations that
26 typically would vary geographically, by specific location in a
27 watershed, and that are shown to be adequate to support a sound

1 ecological environment and to maintain the productivity, extent,
2 and persistence of key aquatic habitats in and along the affected
3 water bodies.

4 (17) "Environmental flow standards" means those
5 requirements adopted by the commission under Section 11.1471.

6 (18) "Flows commission" means the Environmental Flows
7 Commission.

8 (19) "Science advisory committee" means the Texas
9 Environmental Flows Science Advisory Committee.

10 SECTION 5. Section 11.023(a), Water Code, is amended to
11 read as follows:

12 (a) To the extent that state water has not been set aside by
13 the commission under Section 11.1471(a)(2) to meet downstream
14 instream flow needs or freshwater inflow needs, state [State] water
15 may be appropriated, stored, or diverted for:

16 (1) domestic and municipal uses, including water for
17 sustaining human life and the life of domestic animals;

18 (2) agricultural uses and industrial uses, meaning
19 processes designed to convert materials of a lower order of value
20 into forms having greater usability and commercial value, including
21 the development of power by means other than hydroelectric;

22 (3) mining and recovery of minerals;

23 (4) hydroelectric power;

24 (5) navigation;

25 (6) recreation and pleasure;

26 (7) public parks; and

27 (8) game preserves.

1 SECTION 6. Section 11.0235, Water Code, is amended by
2 amending Subsections (c) and (e) and adding Subsections (d-1)
3 through (d-5) and (f) to read as follows:

4 (c) The legislature has expressly required the commission
5 while balancing all other public interests to consider and, to the
6 extent practicable, provide for the freshwater inflows and instream
7 flows necessary to maintain the viability of the state's streams,
8 rivers, and bay and estuary systems in the commission's regular
9 granting of permits for the use of state waters. As an essential
10 part of the state's environmental flows policy, all permit
11 conditions relating to freshwater inflows to affected bays and
12 estuaries and instream flow needs must be subject to temporary
13 suspension if necessary for water to be applied to essential
14 beneficial uses during emergencies.

15 (d-1) The legislature finds that to provide certainty in
16 water management and development and to provide adequate protection
17 of the state's streams, rivers, and bays and estuaries, the state
18 must have a process with specific timelines for prompt action to
19 address environmental flow issues in the state's major basin and
20 bay systems, especially those systems in which unappropriated water
21 is still available.

22 (d-2) The legislature finds that:

23 (1) in those basins in which water is available for
24 appropriation, the commission should establish an environmental
25 set-aside below which water should not be available for
26 appropriation; and

27 (2) in those basins in which the unappropriated water

1 that will be set aside for instream flow and freshwater inflow
2 protection is not sufficient to fully satisfy the environmental
3 flow standards established by the commission, a variety of market
4 approaches, both public and private, for filling the gap must be
5 explored and pursued.

6 (d-3) The legislature finds that while the state has
7 pioneered tools to address freshwater inflow needs for bays and
8 estuaries, there are limitations to those tools in light of both
9 scientific and public policy evolution. To fully address bay and
10 estuary environmental flow issues, the foundation of work
11 accomplished by the state should be improved. While the state's
12 instream flow studies program appears to encompass a comprehensive
13 and scientific approach for establishing a process to assess
14 instream flow needs for rivers and streams across the state, more
15 extensive review and examination of the details of the program,
16 which may not be fully developed until the program is under way, are
17 needed to ensure an effective tool for evaluating riverine
18 environmental flow conditions.

19 (d-4) The legislature finds that the management of water to
20 meet instream flow and freshwater inflow needs should be evaluated
21 on a regular basis and adapted to reflect both improvements in
22 science related to environmental flows and future changes in
23 projected human needs for water. In addition, the development of
24 management strategies for addressing environmental flow needs
25 should be an ongoing, adaptive process that considers and addresses
26 local issues.

27 (d-5) The legislature finds that recommendations for state

1 action to protect instream flows and freshwater inflows should be
2 developed through a consensus-based, regional approach involving
3 balanced representation of stakeholders and that such a process
4 should be encouraged throughout the state.

5 (e) The fact that greater pressures and demands are being
6 placed on the water resources of the state makes it of paramount
7 importance to ensure [~~reexamine the process for ensuring~~] that
8 these important priorities are effectively addressed by detailing
9 how environmental flow standards are to be developed using the
10 environmental studies that have been and are to be performed by the
11 state and others and specifying in clear delegations of authority
12 how those environmental flow standards will be integrated into the
13 regional water planning and water permitting process [~~to the~~
14 ~~commission~~].

15 (f) The legislature recognizes that effective
16 implementation of the approach provided by this chapter for
17 protecting instream flows and freshwater inflows will require more
18 effective water rights administration and enforcement systems than
19 are currently available in most areas of the state.

20 SECTION 7. The heading to Section 11.0236, Water Code, is
21 amended to read as follows:

22 Sec. 11.0236. [~~STUDY COMMISSION ON WATER FOR~~] ENVIRONMENTAL
23 FLOWS COMMISSION.

24 SECTION 8. Section 11.0236, Water Code, is amended by
25 amending Subsections (a), (b), (c), (e) through (j), (n), and (o)
26 and adding Subsection (p) to read as follows:

27 (a) In recognition of the importance that the ecological

1 soundness of our riverine, bay, and estuary systems and riparian
2 lands has on the economy, health, and well-being of the state there
3 is created the [~~Study Commission on Water for~~] Environmental Flows
4 Commission.

5 (b) The flows [~~study~~] commission is composed of nine [~~15~~]
6 members as follows:

7 (1) five [~~two~~] members appointed by the governor;

8 (2) two [~~five~~] members of the senate appointed by the
9 lieutenant governor; and

10 (3) two [~~five~~] members of the house of representatives
11 appointed by the speaker of the house of representatives[+

12 [~~(4) the presiding officer of the commission or the~~
13 ~~presiding officer's designee,~~

14 [~~(5) the chairman of the board or the chairman's~~
15 ~~designee; and~~

16 [~~(6) the presiding officer of the Parks and Wildlife~~
17 ~~Commission or the presiding officer's designee]~~.

18 (c) Of the members appointed under Subsection (b)(1):

19 (1) one member must be a member of the commission;

20 (2) one member must be a member of the board;

21 (3) one member must be a member of the Parks and
22 Wildlife Commission; and

23 (4) two members must represent the public [~~(b)(2):~~

24 [~~(1) one member must represent a river authority or~~
25 ~~municipal water supply agency or authority,~~

26 [~~(2) one member must represent an entity that is~~
27 ~~distinguished by its efforts in resource protection; and~~

1 ~~[(3) three members must be members of the senate].~~

2 (e) Each ~~[appointed]~~ member of the flows ~~[study]~~ commission
3 serves at the will of the person who appointed the member.

4 (f) The appointed senator with the most seniority and the
5 appointed house member with the most seniority serve together as
6 co-presiding officers of the flows ~~[study]~~ commission.

7 (g) A member of the flows ~~[study]~~ commission is not entitled
8 to receive compensation for service on the flows ~~[study]~~ commission
9 but is entitled to reimbursement of the travel expenses incurred by
10 the member while conducting the business of the flows ~~[study]~~
11 commission, as provided by the General Appropriations Act.

12 (h) The flows ~~[study]~~ commission may accept gifts and grants
13 from any source to be used to carry out a function of the flows
14 ~~[study]~~ commission.

15 (i) The commission shall provide staff support for the flows
16 ~~[study]~~ commission.

17 (j) The flows ~~[study]~~ commission shall conduct public
18 hearings and study public policy implications for balancing the
19 demands on the water resources of the state resulting from a growing
20 population with the requirements of the riverine, bay, and estuary
21 systems including granting permits for instream flows dedicated to
22 environmental needs or bay and estuary inflows, use of the Texas
23 Water Trust, and any other issues that the flows ~~[study]~~ commission
24 determines have importance and relevance to the protection of
25 environmental flows. In evaluating the options for providing
26 adequate environmental flows, the flows ~~[study]~~ commission shall
27 take notice of the strong public policy imperative that exists in

1 this state recognizing that environmental flows are important to
2 the biological health of our public and private lands, streams and
3 rivers [~~parks, game preserves~~], and bay and estuary systems and are
4 high priorities in the water management [~~permitting~~] process. The
5 flows [~~study~~] commission shall specifically address:

6 (1) ways that the ecological soundness of those
7 [~~these~~] systems will be ensured in the water rights administration
8 and enforcement and water allocation processes; and

9 (2) appropriate methods to encourage persons
10 voluntarily to convert reasonable amounts of existing water rights
11 to use for environmental flow protection temporarily or permanently
12 [~~process~~].

13 (n) The flows [~~study~~] commission may [~~shall~~] adopt rules,
14 procedures, and policies as needed to administer this section, to
15 implement its responsibilities, and to exercise its authority under
16 Sections 11.02361 and 11.02362.

17 (o) Chapter 2110, Government Code, does not apply to the
18 size, composition, or duration of the flows commission.

19 (p) Not later than December 1, 2006, and every two years
20 thereafter, the flows commission shall issue and promptly deliver
21 to the governor, lieutenant governor, and speaker of the house of
22 representatives copies of a report summarizing:

23 (1) any hearings conducted by the flows commission;
24 (2) any studies conducted by the flows commission;
25 (3) any legislation proposed by the flows commission;
26 (4) progress made in implementing Sections 11.02361
27 and 11.02362; and

1 (5) any other findings and recommendations of the
2 flows commission [~~The study commission is abolished and this~~
3 ~~section expires September 1, 2005~~].

4 SECTION 9. Subchapter B, Chapter 11, Water Code, is amended
5 by adding Sections 11.02361 and 11.02362 to read as follows:

6 Sec. 11.02361. TEXAS ENVIRONMENTAL FLOWS SCIENCE ADVISORY
7 COMMITTEE. (a) The Texas Environmental Flows Science Advisory
8 Committee consists of at least five but not more than nine members
9 appointed by the flows commission.

10 (b) The flows commission shall appoint to the science
11 advisory committee persons who will provide an objective
12 perspective and diverse technical expertise, including expertise
13 in hydrology, hydraulics, water resources, aquatic and terrestrial
14 biology, geomorphology, geology, water quality, computer modeling,
15 and other technical areas pertinent to the evaluation of
16 environmental flows.

17 (c) Members of the science advisory committee serve
18 five-year terms expiring March 1. A vacancy on the science advisory
19 committee is filled by appointment by the co-presiding officers of
20 the flows commission for the unexpired term.

21 (d) Chapter 2110, Government Code, does not apply to the
22 size, composition, or duration of the science advisory committee.

23 (e) The science advisory committee shall:

24 (1) serve as an objective scientific body to advise
25 and make recommendations to the flows commission on issues relating
26 to the science of environmental flow protection; and

27 (2) develop recommendations to help provide overall

1 direction, coordination, and consistency relating to:

2 (A) environmental flow methodologies for bay and
3 estuary studies and instream flow studies;

4 (B) environmental flow programs at the
5 commission, the Parks and Wildlife Department, and the board; and

6 (C) the work of the basin and bay expert science
7 teams described in Section 11.02362.

8 (f) To assist the flows commission to assess the extent to
9 which the recommendations of the science advisory committee are
10 considered and implemented, the commission, the Parks and Wildlife
11 Department, and the board shall provide written reports to the
12 flows commission, at intervals determined by the flows commission,
13 that describe:

14 (1) the actions taken by each agency in response to
15 each recommendation; and

16 (2) for each recommendation not implemented, the
17 reason it was not implemented.

18 Sec. 11.02362. DEVELOPMENT OF ENVIRONMENTAL FLOW REGIME
19 RECOMMENDATIONS. (a) For the purposes of this section, the flows
20 commission, not later than January 1, 2006, shall define the
21 geographical extent of each river basin and bay system in this state
22 for the sole purpose of developing environmental flow regime
23 recommendations under this section and adoption of environmental
24 flow standards under Section 11.1471.

25 (b) The flows commission shall give priority in descending
26 order to the following river basin and bay systems of the state for
27 the purpose of developing environmental flow regime

1 recommendations and adopting environmental flow standards:

2 (1) the river basin and bay system consisting of the
3 Trinity and San Jacinto Rivers and Galveston Bay and the river basin
4 and bay system consisting of the Sabine and Neches Rivers and Sabine
5 Lake Bay;

6 (2) the river basin and bay system consisting of the
7 Colorado and Lavaca Rivers and Matagorda and Lavaca Bays and the
8 river basin and bay system consisting of the Guadalupe, San
9 Antonio, and Aransas Rivers and Copano, Aransas, and San Antonio
10 Bays; and

11 (3) the river basin and bay system consisting of the
12 Nueces River and Corpus Christi and Baffin Bays, the river basin and
13 bay system consisting of the Rio Grande, the Rio Grande estuary, and
14 the Lower Laguna Madre, and the Brazos River and its associated bay
15 and estuary system.

16 (c) For the river basin and bay systems listed in Subsection
17 (b)(1):

18 (1) the flows commission shall appoint the basin and
19 bay area stakeholders committee not later than January 1, 2006;

20 (2) the basin and bay area stakeholders committee
21 shall establish a basin and bay expert science team not later than
22 March 1, 2006;

23 (3) the basin and bay expert science team shall
24 finalize environmental flow regime recommendations and submit them
25 to the basin and bay area stakeholders committee, the flows
26 commission, and the commission not later than March 1, 2007;

27 (4) the basin and bay area stakeholders committee

1 shall submit to the commission its comments on and recommendations
2 regarding the basin and bay expert science team's recommended
3 environmental flow regime not later than September 1, 2007; and

4 (5) the commission shall adopt the environmental flow
5 standards as provided by Section 11.1471 not later than September
6 1, 2008.

7 (d) The flows commission shall appoint the basin and bay
8 area stakeholders committees for the river basin and bay systems
9 listed in Subsection (b)(2) not later than September 1, 2006, and
10 shall appoint the basin and bay area stakeholders committees for
11 the river basin and bay systems listed in Subsection (b)(3) not
12 later than September 1, 2007. The flows commission shall establish
13 a schedule for the performance of the tasks listed in Subsections
14 (c)(2)-(5) with regard to the river basin and bay systems listed in
15 Subsections (b)(2) and (3) that will result in the adoption of
16 environmental flow standards for that river basin and bay system by
17 the commission as soon as is reasonably possible. Each basin and
18 bay area stakeholders committee and basin and bay expert science
19 team for a river basin and bay system listed in Subsection (b)(2) or
20 (3) shall make recommendations to the flows commission with regard
21 to the schedule applicable to that river basin and bay system. The
22 flows commission shall consider the recommendations of the basin
23 and bay area stakeholders committee and basin and bay expert
24 science team as well as coordinate with, and give appropriate
25 consideration to the recommendations of, the commission, the Parks
26 and Wildlife Department, and the board in establishing the
27 schedule.

1 (e) For a river basin and bay system or a river basin that
2 does not have an associated bay system in this state not listed in
3 Subsection (b), the flows commission shall establish a schedule for
4 the development of environmental flow regime recommendations and
5 the adoption of environmental flow standards. The flows commission
6 shall develop the schedule in consultation with the commission, the
7 Parks and Wildlife Department, the board, and the pertinent basin
8 and bay area stakeholders committee and basin and bay expert
9 science team. The flows commission may, on its own initiative or on
10 request, modify a schedule established under this subsection to be
11 more responsive to particular circumstances, local desires,
12 changing conditions, or time-sensitive conflicts. This subsection
13 does not prohibit, in a river basin and bay system for which the
14 flows commission has not yet established a schedule for the
15 development of environmental flow regime recommendations and the
16 adoption of environmental flow standards, an effort to develop
17 information on environmental flow needs and ways in which those
18 needs can be met by a voluntary consensus-building process.

19 (f) The flows commission shall appoint a basin and bay area
20 stakeholders committee for each river basin and bay system in this
21 state for which a schedule for the development of environmental
22 flow regime recommendations and the adoption of environmental flow
23 standards is specified by or established under Subsection (c), (d),
24 or (e). Chapter 2110, Government Code, does not apply to the size,
25 composition, or duration of a basin and bay area stakeholders
26 committee. Each committee must consist of at least 17 members. The
27 members must represent appropriate stakeholders, including

1 representatives of:

- 2 (1) agricultural water users;
- 3 (2) recreational water users, including coastal
- 4 recreational anglers and businesses supporting water recreation;
- 5 (3) municipalities;
- 6 (4) soil and water conservation districts;
- 7 (5) industrial water users, including representatives
- 8 of both the manufacturing and refining sectors;
- 9 (6) commercial fishermen;
- 10 (7) public interest groups;
- 11 (8) regional water planning groups;
- 12 (9) groundwater conservation districts;
- 13 (10) river authorities and other conservation and
- 14 reclamation districts with jurisdiction over surface water; and
- 15 (11) environmental interests.

16 (g) Members of a basin and bay area stakeholders committee
17 serve five-year terms expiring March 1. If a vacancy occurs on a
18 committee, the remaining members of the committee by majority vote
19 shall appoint a member to serve the remainder of the unexpired term.

20 (h) Meetings of a basin and bay area stakeholders committee
21 must be open to the public.

22 (i) Each basin and bay area stakeholders committee shall
23 establish a basin and bay expert science team for the river basin
24 and bay system for which the committee is established. The basin
25 and bay expert science team must be established not later than six
26 months after the date the basin and bay area stakeholders committee
27 is established. Chapter 2110, Government Code, does not apply to

1 the size, composition, or duration of a basin and bay expert science
2 team. Each basin and bay expert science team must be composed of
3 technical experts with special expertise regarding the river basin
4 and bay system or regarding the development of environmental flow
5 regimes. A person may serve as a member of more than one basin and
6 bay expert science team at the same time.

7 (j) The members of a basin and bay expert science team serve
8 five-year terms expiring April 1. A vacancy on a basin and bay
9 expert science team is filled by appointment by the pertinent basin
10 and bay area stakeholders committee to serve the remainder of the
11 unexpired term.

12 (k) The science advisory committee shall appoint one of its
13 members to serve as a liaison to each basin and bay expert science
14 team to facilitate coordination and consistency in environmental
15 flow activities throughout the state. The commission, the Parks
16 and Wildlife Department, and the board shall provide technical
17 assistance to each basin and bay expert science team, including
18 information about the studies conducted under Sections 16.058 and
19 16.059, and may serve as nonvoting members of the basin and bay
20 expert science team to facilitate the development of environmental
21 flow regime recommendations.

22 (l) Where reasonably practicable, meetings of a basin and
23 bay expert science team must be open to the public.

24 (m) Each basin and bay expert science team shall develop
25 environmental flow analyses and a recommended environmental flow
26 regime for the river basin and bay system for which the team is
27 established through a collaborative process designed to achieve a

1 consensus. In developing the analyses and recommendations, the
2 science team must consider all reasonably available science,
3 without regard to the need for the water for other uses, and the
4 science team's recommendations must be based solely on the best
5 science available. For the Rio Grande below Fort Quitman, any uses
6 attributable to Mexican water flows must be excluded from
7 environmental flow regime recommendations.

8 (n) Each basin and bay expert science team shall submit its
9 environmental flow analyses and environmental flow regime
10 recommendations to the pertinent basin and bay area stakeholders
11 committee, the flows commission, and the commission in accordance
12 with the applicable schedule specified by or established under
13 Subsection (c), (d), or (e). The basin and bay area stakeholders
14 committee and the flows commission may not change the environmental
15 flow analyses or environmental flow regime recommendations of the
16 basin and bay expert science team.

17 (o) Each basin and bay area stakeholders committee shall
18 review the environmental flow analyses and environmental flow
19 regime recommendations submitted by the committee's basin and bay
20 expert science team and shall consider them in conjunction with
21 other factors, including the present and future needs for water for
22 other uses related to water supply planning in the pertinent river
23 basin and bay system. For the Rio Grande, the basin and bay area
24 stakeholders committee shall also consider the water accounting
25 requirements for any international water sharing treaty, minutes,
26 and agreement applicable to the Rio Grande and the effects on
27 allocation of water by the Rio Grande watermaster in the middle and

1 lower Rio Grande. The Rio Grande basin and bay expert science team
2 may not recommend any environmental flow regime that would result
3 in a violation of a treaty or court decision. The basin and bay area
4 stakeholders committee shall develop recommendations regarding
5 environmental flow standards and strategies to meet the
6 environmental flow standards and submit those recommendations to
7 the commission and to the flows commission in accordance with the
8 applicable schedule specified by or established under Subsection
9 (c), (d), or (e). In developing its recommendations, the basin and
10 bay area stakeholders committee shall operate on a consensus basis
11 to the maximum extent possible.

12 (p) In recognition of the importance of adaptive
13 management, after submitting its recommendations regarding
14 environmental flow standards and strategies to meet the
15 environmental flow standards to the commission, each basin and bay
16 area stakeholders committee, with the assistance of the pertinent
17 basin and bay expert science team, shall prepare and submit for
18 approval by the flows commission a work plan. The work plan must:

19 (1) establish a periodic review of the basin and bay
20 environmental flow analyses and environmental flow regime
21 recommendations, environmental flow standards, and strategies, to
22 occur at least once every 10 years;

23 (2) prescribe specific monitoring, studies, and
24 activities; and

25 (3) establish a schedule for continuing the validation
26 or refinement of the basin and bay environmental flow analyses and
27 environmental flow regime recommendations, the environmental flow

1 standards adopted by the commission, and the strategies to achieve
2 those standards.

3 (g) In accordance with the applicable schedule specified by
4 or established under Subsection (c), (d), or (e), the flows
5 commission, with input from the science advisory committee, shall
6 review the environmental flow analyses and environmental flow
7 regime recommendations submitted by each basin and bay expert
8 science team. If appropriate, the flows commission shall submit
9 comments on the analyses and recommendations to the commission for
10 use by the commission in adopting rules under Section 11.1471.
11 Comments must be submitted not later than six months after the date
12 of receipt of the analyses and recommendations.

13 (r) In the event the commission, by permit or order, has
14 established an estuary advisory council, that council may continue
15 in full force and effect.

16 SECTION 10. Sections 11.0237(a) and (b), Water Code, are
17 amended to read as follows:

18 (a) The commission may not issue a new permit for instream
19 flows dedicated to environmental needs or bay and estuary inflows.
20 The [~~This section does not prohibit the~~] commission may approve
21 [~~from issuing~~] an application to amend [~~amendment to~~] an existing
22 permit or certificate of adjudication to change the use to or add a
23 use for instream flows dedicated to environmental needs or bay and
24 estuary inflows.

25 (b) This section does not alter the commission's
26 obligations under Section 11.042(b) or (c), 11.046(b),
27 11.085(k)(2)(F), 11.134(b)(3)(D), 11.147, 11.1471, 11.1491,

1 11.150, 11.152, 16.058, or 16.059.

2 SECTION 11. Section 11.082(b), Water Code, is amended to
3 read as follows:

4 (b) The state may recover the penalties prescribed in
5 Subsection (a) [~~of this section~~] by suit brought for that purpose in
6 a court of competent jurisdiction. The state may seek those
7 penalties regardless of whether a watermaster has been appointed
8 for the water division, river basin, or segment of a river basin
9 where the unlawful use is alleged to have occurred.

10 SECTION 12. Section 11.0841, Water Code, is amended by
11 adding Subsection (c) to read as follows:

12 (c) For purposes of this section, the Parks and Wildlife
13 Department has:

14 (1) the rights of a holder of a water right that is
15 held in the Texas Water Trust, including the right to file suit in a
16 civil court to prevent the unlawful use of such a right;

17 (2) the right to act in the same manner that a holder
18 of a water right may act to protect the holder's rights in seeking
19 to prevent any person from appropriating water in violation of a
20 set-aside established by the commission under Section 11.1471 to
21 meet instream flow needs or freshwater inflow needs; and

22 (3) the right to file suit in a civil court to prevent
23 the unlawful use of a set-aside established under Section 11.1471.

24 SECTION 13. Section 11.0842(a), Water Code, is amended to
25 read as follows:

26 (a) If a person violates this chapter, a rule or order
27 adopted under this chapter or Section 16.236 [~~of this code~~], or a

1 permit, certified filing, or certificate of adjudication issued
2 under this chapter, the commission may assess an administrative
3 penalty against that person as provided by this section. The
4 commission may assess an administrative penalty for a violation
5 relating to a water division or a river basin or segment of a river
6 basin regardless of whether a watermaster has been appointed for
7 the water division or river basin or segment of the river basin.

8 SECTION 14. Section 11.0843(a), Water Code, is amended to
9 read as follows:

10 (a) Upon witnessing a violation of this chapter or a rule or
11 order or a water right issued under this chapter, the executive
12 director or a person designated by the executive director,
13 including a watermaster or the watermaster's deputy, [as defined by
14 commission rule,] may issue the alleged violator a field citation
15 alleging that a violation has occurred and providing the alleged
16 violator the option of either:

17 (1) without admitting to or denying the alleged
18 violation, paying an administrative penalty in accordance with the
19 predetermined penalty amount established under Subsection (b) [~~of~~
20 ~~this section~~] and taking remedial action as provided in the
21 citation; or

22 (2) requesting a hearing on the alleged violation in
23 accordance with Section 11.0842 [~~of this code~~].

24 SECTION 15. Section 11.134(b), Water Code, is amended to
25 read as follows:

26 (b) The commission shall grant the application only if:

27 (1) the application conforms to the requirements

1 prescribed by this chapter and is accompanied by the prescribed
2 fee;

3 (2) unappropriated water is available in the source of
4 supply;

5 (3) the proposed appropriation:

6 (A) is intended for a beneficial use;

7 (B) does not impair existing water rights or
8 vested riparian rights;

9 (C) is not detrimental to the public welfare;

10 (D) considers any applicable environmental flow
11 standards established under Section 11.1471 and, if applicable, the
12 assessments performed under Sections 11.147(d) and (e) and Sections
13 11.150, 11.151, and 11.152; and

14 (E) addresses a water supply need in a manner
15 that is consistent with the state water plan and the relevant
16 approved regional water plan for any area in which the proposed
17 appropriation is located, unless the commission determines that
18 conditions warrant waiver of this requirement; and

19 (4) the applicant has provided evidence that
20 reasonable diligence will be used to avoid waste and achieve water
21 conservation as defined by [~~Subdivision (8)(B),~~] Section
22 11.002(8)(B) [~~11.002~~].

23 SECTION 16. Section 11.147, Water Code, is amended by
24 amending Subsections (b), (d), and (e) and adding Subsections
25 (e-1), (e-2), and (e-3) to read as follows:

26 (b) In its consideration of an application for a permit to
27 store, take, or divert water, the commission shall assess the

1 effects, if any, of the issuance of the permit on the bays and
2 estuaries of Texas. For permits issued within an area that is 200
3 river miles of the coast, to commence from the mouth of the river
4 thence inland, the commission shall include in the permit any
5 conditions considered necessary to maintain freshwater inflows to
6 any affected bay and estuary system, to the extent practicable when
7 considering all public interests and the studies mandated by
8 Section 16.058 as evaluated under Section 11.1491[, ~~those~~
9 ~~conditions considered necessary to maintain beneficial inflows to~~
10 ~~any affected bay and estuary system~~].

11 (d) In its consideration of an application to store, take,
12 or divert water, the commission shall include in the permit, to the
13 extent practicable when considering all public interests, those
14 conditions considered by the commission necessary to maintain
15 existing instream uses and water quality of the stream or river to
16 which the application applies. In determining what conditions to
17 include in the permit under this subsection, the commission shall
18 consider among other factors:

19 (1) the studies mandated by Section 16.059; and

20 (2) any water quality assessment performed under
21 Section 11.150.

22 (e) The commission shall include in the permit, to the
23 extent practicable when considering all public interests, those
24 conditions considered by the commission necessary to maintain fish
25 and wildlife habitats. In determining what conditions to include
26 in the permit under this subsection, the commission shall consider
27 any assessment performed under Section 11.152.

1 (e-1) Any permit for a new appropriation of water or an
2 amendment to an existing water right that increases the amount of
3 water authorized to be stored, taken, or diverted must include a
4 provision allowing the commission to adjust the conditions included
5 in the permit or amended water right to provide for protection of
6 instream flows or freshwater inflows. With respect to an amended
7 water right, the provision may not allow the commission to adjust a
8 condition of the amendment other than a condition that applies only
9 to the increase in the amount of water to be stored, taken, or
10 diverted authorized by the amendment. This subsection does not
11 affect an appropriation of or an authorization to store, take, or
12 divert water under a permit or amendment to a water right issued
13 before November 1, 2005. The commission shall adjust the
14 conditions if the commission determines, through an expedited
15 public comment process, that such an adjustment is appropriate to
16 achieve compliance with applicable environmental flow standards
17 adopted under Section 11.1471. The adjustment:

18 (1) in combination with any previous adjustments made
19 under this subsection may not increase the amount of the
20 pass-through or release requirement for the protection of instream
21 flows or freshwater inflows by more than 12.5 percent of the
22 annualized total of that requirement contained in the permit as
23 issued or of that requirement contained in the amended water right
24 and applicable only to the increase in the amount of water
25 authorized to be stored, taken, or diverted under the amended water
26 right;

27 (2) must be based on appropriate consideration of the

1 priority dates and diversion locations of any other water rights
2 granted in the same river basin that are subject to adjustment under
3 this subsection; and

4 (3) must be based on appropriate consideration of any
5 voluntary contributions to the Texas Water Trust that contribute
6 toward meeting the environmental flow standards.

7 (e-2) Any water right holder making a contribution
8 described by Subsection (e-1)(3) is entitled to appropriate credit
9 of such benefits against adjustments of the holder's water right
10 pursuant to Subsection (e-1)(1).

11 (e-3) Notwithstanding Subsections (b)-(e), for the purpose
12 of determining the environmental flow conditions necessary to
13 maintain freshwater inflows to an affected bay and estuary system,
14 existing instream uses and water quality of a stream or river, or
15 fish and aquatic wildlife habitats, the commission shall apply any
16 applicable environmental flow standard, including any
17 environmental flow set-aside, adopted under Section 11.1471
18 instead of considering the factors specified by those subsections.

19 SECTION 17. Subchapter D, Chapter 11, Water Code, is
20 amended by adding Section 11.1471 to read as follows:

21 Sec. 11.1471. ENVIRONMENTAL FLOW STANDARDS AND SET-ASIDES.

22 (a) The commission by rule shall:

23 (1) adopt appropriate environmental flow standards
24 for each river basin and bay system in this state that are adequate
25 to support a sound ecological environment, to the maximum extent
26 reasonable considering other public interests and other relevant
27 factors;

1 (2) establish an amount of unappropriated water, if
2 available, to be set aside to satisfy the environmental flow
3 standards to the maximum extent reasonable when considering human
4 water needs; and

5 (3) establish procedures for implementing an
6 adjustment of the conditions included in a permit or an amended
7 water right as provided by Sections 11.147(e-1) and (e-2).

8 (b) In adopting environmental flow standards for a river
9 basin and bay system under Subsection (a)(1), the commission shall
10 consider:

11 (1) the definition of the geographical extent of the
12 river basin and bay system adopted by the flows commission under
13 Section 11.02362(a) and the definition and designation of the river
14 basin by the board under Section 16.051(c);

15 (2) the schedule for the adoption of environmental
16 flow standards for the river basin and bay system established by the
17 flows commission under Section 11.02362(d) or (e), if applicable;

18 (3) the environmental flow analyses and the
19 recommended environmental flow regime developed by the applicable
20 basin and bay expert science team under Section 11.02362(m);

21 (4) the recommendations regarding environmental flow
22 standards and strategies to meet the flow standards developed by
23 the applicable basin and bay area stakeholders committee under
24 Section 11.02362(o);

25 (5) the specific characteristics of the river basin
26 and bay system;

27 (6) economic factors;

1 (7) the human and other competing water needs in the
2 river basin and bay system;

3 (8) all reasonably available scientific information,
4 including any scientific information provided by the science
5 advisory committee; and

6 (9) any other appropriate information.

7 (c) Environmental flow standards adopted under Subsection
8 (a)(1) must consist of a schedule of flow quantities, reflecting
9 seasonal and yearly fluctuations that may vary geographically by
10 specific location in a river basin and bay system.

11 (d) As provided by Section 11.023, the commission may not
12 issue a permit for a new appropriation or an amendment to an
13 existing water right that increases the amount of water authorized
14 to be stored, taken, or diverted if the issuance of the permit or
15 amendment would impair an environmental flow set-aside established
16 under Subsection (a)(2). A permit for a new appropriation or an
17 amendment to an existing water right that increases the amount of
18 water authorized to be stored, taken, or diverted that is issued
19 after the adoption of an applicable environmental flow set-aside
20 must contain appropriate conditions to ensure protection of the
21 environmental flow set-aside.

22 (e) An environmental flow set-aside established under
23 Subsection (a)(2) for a river basin and bay system other than the
24 middle and lower Rio Grande must be assigned a priority date
25 corresponding to the date the commission receives environmental
26 flow regime recommendations from the applicable basin and bay
27 expert science team and be included in the appropriate water

1 availability models in connection with an application for a permit
2 for a new appropriation or for an amendment to an existing water
3 right that increases the amount of water authorized to be stored,
4 taken, or diverted.

5 (f) An environmental flow standard or environmental flow
6 set-aside adopted under Subsection (a) may be altered by the
7 commission in a rulemaking process undertaken in accordance with a
8 schedule established by the commission. The commission's schedule
9 may not provide for the rulemaking process to occur more frequently
10 than once every 10 years unless the applicable work plan approved by
11 the flows commission under Section 11.02362(p) provides for a
12 periodic review under that section to occur more frequently than
13 once every 10 years. In that event, the commission may provide for
14 the rulemaking process to be undertaken in conjunction with the
15 periodic review if the commission determines that schedule to be
16 appropriate.

17 SECTION 18. The heading to Section 11.148, Water Code, is
18 amended to read as follows:

19 Sec. 11.148. EMERGENCY SUSPENSION OF PERMIT CONDITIONS AND
20 EMERGENCY AUTHORITY TO MAKE AVAILABLE WATER SET ASIDE FOR
21 ENVIRONMENTAL FLOWS.

22 SECTION 19. Section 11.148, Water Code, is amended by
23 adding Subsection (a-1) and amending Subsections (b) and (c) to
24 read as follows:

25 (a-1) State water that is set aside by the commission to
26 meet the needs for freshwater inflows to affected bays and
27 estuaries and instream uses under Section 11.1471(a)(2) may be made

1 available temporarily for other essential beneficial uses if the
2 commission finds that an emergency exists that cannot practically
3 be resolved in another way.

4 (b) Before the commission suspends a permit condition under
5 Subsection (a) or makes water available temporarily under
6 Subsection (a-1) [of this section], it must give written notice to
7 the Parks and Wildlife Department of the proposed action
8 ~~[suspension]~~. The commission shall give the Parks and Wildlife
9 Department an opportunity to submit comments on the proposed action
10 ~~[suspension]~~ within 72 hours from such time and the commission
11 shall consider those comments before issuing its order implementing
12 the proposed action ~~[imposing the suspension]~~.

13 (c) The commission may suspend the permit condition under
14 Subsection (a) or make water available temporarily under Subsection
15 (a-1) without notice to any other interested party other than the
16 Parks and Wildlife Department as provided by Subsection (b) ~~[of~~
17 ~~this section]~~. However, all affected persons shall be notified
18 immediately by publication, and a hearing to determine whether the
19 suspension should be continued shall be held within 15 days of the
20 date on which the order to suspend is issued.

21 SECTION 20. Section 11.1491(a), Water Code, is amended to
22 read as follows:

23 (a) The Parks and Wildlife Department and the commission
24 shall have joint responsibility to review the studies prepared
25 under Section 16.058 ~~[of this code]~~, to determine inflow conditions
26 necessary for the bays and estuaries, and to provide information
27 necessary for water resources management. Each agency shall

1 designate an employee to share equally in the oversight of the
2 program. Other responsibilities shall be divided between the Parks
3 and Wildlife Department and the commission to maximize present
4 in-house capabilities of personnel and to minimize costs to the
5 state. Each agency shall have reasonable access to all information
6 produced by the other agency. Publication of reports completed
7 under this section shall be submitted for comment to ~~[both]~~ the
8 commission, ~~[and]~~ the Parks and Wildlife Department, the flows
9 commission, the science advisory committee, and any applicable
10 basin and bay area stakeholders committee and basin and bay expert
11 science team.

12 SECTION 21. Section 11.329(g), Water Code, is amended to
13 read as follows:

14 (g) The commission may not assess costs under this section
15 against a holder of a non-priority hydroelectric right that owns or
16 operates privately owned facilities that collectively have a
17 capacity of less than two megawatts or against a holder of a water
18 right placed in the Texas Water Trust for a term of at least 20
19 years. ~~[This subsection is not intended to affect in any way the~~
20 ~~fees assessed on a water right holder by the commission under~~
21 ~~Section 1.29(d), Chapter 626, Acts of the 73rd Legislature, Regular~~
22 ~~Session, 1993. For purposes of Section 1.29(d), Chapter 626, Acts~~
23 ~~of the 73rd Legislature, Regular Session, 1993, a holder of a~~
24 ~~non-priority hydroelectric right that owns or operates privately~~
25 ~~owned facilities that collectively have a capacity of less than two~~
26 ~~megawatts shall be assessed fees at the same rate per acre-foot~~
27 ~~charged to a holder of a non-priority hydroelectric right that owns~~

1 ~~or operates privately owned facilities that collectively have a~~
2 ~~capacity of more than two megawatts.]~~

3 SECTION 22. Section 11.404(e), Water Code, is amended to
4 read as follows:

5 (e) The court may not assess costs and expenses under this
6 section against:

7 (1) a holder of a non-priority hydroelectric right
8 that owns or operates privately owned facilities that collectively
9 have a capacity of less than two megawatts; or

10 (2) a holder of a water right placed in the Texas Water
11 Trust for a term of at least 20 years.

12 SECTION 23. Subchapter I, Chapter 11, Water Code, is
13 amended by adding Section 11.4531 to read as follows:

14 Sec. 11.4531. WATERMASTER ADVISORY COMMITTEE. (a) For
15 each river basin or segment of a river basin for which the executive
16 director appoints a watermaster under this subchapter, the
17 executive director shall appoint a watermaster advisory committee
18 consisting of at least nine but not more than 15 members. A member
19 of the advisory committee must be a holder of a water right or a
20 representative of a holder of a water right in the river basin or
21 segment of the river basin for which the watermaster is appointed.
22 In appointing members to the advisory committee, the executive
23 director shall consider:

24 (1) geographic representation;

25 (2) amount of water rights held;

26 (3) different types of holders of water rights and
27 users, including water districts, municipal suppliers, irrigators,

1 and industrial users; and

2 (4) experience and knowledge of water management
3 practices.

4 (b) An advisory committee member is not entitled to
5 reimbursement of expenses or to compensation.

6 (c) An advisory committee member serves a two-year term
7 expiring August 31 of each odd-numbered year and holds office until
8 a successor is appointed.

9 (d) The advisory committee shall meet within 30 days after
10 the date the initial appointments have been made and shall select a
11 presiding officer to serve a one-year term. The committee shall
12 meet regularly as necessary.

13 (e) The advisory committee shall:

14 (1) make recommendations to the executive director
15 regarding activities of benefit to the holders of water rights in
16 the administration and distribution of water to holders of water
17 rights in the river basin or segment of the river basin for which
18 the watermaster is appointed;

19 (2) review and comment to the executive director on
20 the annual budget of the watermaster operation; and

21 (3) perform other advisory duties as requested by the
22 executive director regarding the watermaster operation or as
23 requested by holders of water rights and considered by the
24 committee to benefit the administration of water rights in the
25 river basin or segment of the river basin for which the watermaster
26 is appointed.

27 SECTION 24. Sections 11.454 and 11.455, Water Code, are

1 amended to read as follows:

2 Sec. 11.454. DUTIES AND AUTHORITY OF THE WATERMASTER.
3 Section 11.327 applies to the duties and authority of a watermaster
4 appointed for a river basin or segment of a river basin under this
5 subchapter in the same manner as that section applies to the duties
6 and authority of a watermaster appointed for a water division under
7 Subchapter G [~~A watermaster as the agent of the commission and under~~
8 ~~the executive director's supervision shall:~~

9 ~~[(1) divide the water of the streams or other sources~~
10 ~~of supply of his segment or basin in accordance with the authorized~~
11 ~~water rights,~~

12 ~~[(2) regulate or cause to be regulated the controlling~~
13 ~~works of reservoirs and diversion works in time of water shortage,~~
14 ~~as is necessary because of the rights existing in the streams of his~~
15 ~~segment or basin, or as is necessary to prevent the waste of water~~
16 ~~or its diversion, taking, storage, or use in excess of the~~
17 ~~quantities to which the holders of water rights are lawfully~~
18 ~~entitled, and~~

19 ~~[(3) perform any other duties and exercise any~~
20 ~~authority directed by the commission].~~

21 Sec. 11.455. COMPENSATION AND EXPENSES OF WATERMASTER
22 [ASSESSMENTS]. (a) Section 11.329 applies to the payment of the
23 compensation and expenses of a watermaster appointed for a river
24 basin or segment of a river basin under this subchapter in the same
25 manner as that section applies to the payment of the compensation
26 and expenses of a watermaster appointed for a water division under
27 Subchapter G.

1 (b) The executive director shall deposit the assessments
2 collected under this section to the credit of the watermaster fund.

3 (c) Money deposited under this section to the credit of the
4 watermaster fund may be used only for the purposes specified by
5 Section 11.3291 with regard to the watermaster operation under this
6 subchapter with regard to which the assessments were collected [~~The~~
7 ~~commission may assess the costs of the watermaster against all~~
8 ~~persons who hold water rights in the river basin or segment of the~~
9 ~~river basin under the watermaster's jurisdiction in accordance with~~
10 ~~Section 11.329 of this code~~].

11 SECTION 25. Subchapter F, Chapter 15, Water Code, is
12 amended by adding Section 15.4063 to read as follows:

13 Sec. 15.4063. ENVIRONMENTAL FLOWS FUNDING. The board may
14 authorize the use of money in the research and planning fund:

15 (1) to compensate the members of the Texas
16 Environmental Flows Science Advisory Committee established under
17 Section 11.02361 for attendance and participation at meetings of
18 the committee and for transportation, meals, lodging, or other
19 travel expenses associated with attendance at those meetings as
20 provided by the General Appropriations Act;

21 (2) for contracts with cooperating state and federal
22 agencies and universities and with private entities as necessary to
23 provide technical assistance to enable the Texas Environmental
24 Flows Science Advisory Committee and the basin and bay expert
25 science teams established under Section 11.02362 to perform their
26 statutory duties;

27 (3) to compensate the members of the expert science

1 teams created pursuant to Section 11.02362(i) for attendance and
2 participation at meetings of the teams and for transportation,
3 meals, lodging, or other travel expenses associated with attendance
4 at those meetings as provided by the General Appropriations Act;
5 and

6 (4) for contracts with political subdivisions
7 designated as representatives of stakeholder committees
8 established pursuant to Section 11.02362 to fund all or part of the
9 administrative expenses for conducting meetings of the stakeholder
10 committee or the associated expert science team.

11 SECTION 26. Section 15.7031, Water Code, is amended by
12 amending Subsection (c) and adding Subsection (e) to read as
13 follows:

14 (c) The dedication of any water rights placed in trust must
15 be reviewed and approved by the commission, in consultation with
16 the board, ~~[and]~~ the Parks and Wildlife Department, and the
17 Environmental Flows Commission. In addition, the Department of
18 Agriculture and the basin and bay area stakeholders committee and
19 basin and bay expert science team established under Section
20 11.02362 for the river basin and bay system to which the water right
21 pertains may provide input to the commission, as appropriate,
22 during the review and approval process for dedication of water
23 rights.

24 (e) While a water right is held in the trust, the water
25 authorized for beneficial use under the terms of the water right is
26 considered to be held for instream flows, water quality, fish and
27 wildlife habitat, bay and estuary inflows, or other environmental

1 uses without the need for a permit amendment. After the water right
2 is withdrawn in whole or in part from the trust, the use of the water
3 right or portion of the water right withdrawn must be in accordance
4 with the terms of the water right.

5 SECTION 27. Section 16.059(d), Water Code, is amended to
6 read as follows:

7 (d) The priority studies shall be completed not later than
8 December 31, 2014 [2010]. The Parks and Wildlife Department, the
9 commission, and the board shall establish a work plan that
10 prioritizes the studies and that sets interim deadlines providing
11 for publication of flow determinations for individual rivers and
12 streams on a reasonably consistent basis throughout the prescribed
13 study period. Before publication, completed studies shall be
14 submitted for comment to the commission, the board, and the Parks
15 and Wildlife Department.

16 SECTION 28. Section 26.0135(h), Water Code, as amended by
17 Chapters 234 and 965, Acts of the 77th Legislature, Regular
18 Session, 2001, is reenacted and amended to read as follows:

19 (h) The commission shall apportion, assess, and recover the
20 reasonable costs of administering the water quality management
21 programs under this section from users of water and wastewater
22 permit holders in the watershed according to the records of the
23 commission generally in proportion to their right, through permit
24 or contract, to use water from and discharge wastewater in the
25 watershed. Irrigation water rights, ~~[and]~~ non-priority
26 hydroelectric rights of a water right holder that owns or operates
27 privately owned facilities that collectively have a capacity of

1 less than two megawatts, and water rights held in the Texas Water
2 Trust for terms of at least 20 years will not be subject to this
3 assessment. The cost to river authorities and others to conduct
4 water quality monitoring and assessment shall be subject to prior
5 review and approval by the commission as to methods of allocation
6 and total amount to be recovered. The commission shall adopt rules
7 to supervise and implement the water quality monitoring,
8 assessment, and associated costs. The rules shall ensure that
9 water users and wastewater dischargers do not pay excessive
10 amounts, that program funds are equitably apportioned among basins,
11 that a river authority may recover no more than the actual costs of
12 administering the water quality management programs called for in
13 this section, and that no municipality shall be assessed cost for
14 any efforts that duplicate water quality management activities
15 described in Section 26.177 [~~of this chapter~~]. The rules
16 concerning the apportionment and assessment of reasonable costs
17 shall provide for a recovery of not more than \$5,000,000 annually.
18 Costs recovered by the commission are to be deposited to the credit
19 of the water resource management account and may be used only to
20 accomplish the purposes of this section. The commission may apply
21 not more than 10 percent of the costs recovered annually toward the
22 commission's overhead costs for the administration of this section
23 and the implementation of regional water quality assessments. The
24 commission, with the assistance and input of each river authority,
25 shall file a written report accounting for the costs recovered
26 under this section with the governor, the lieutenant governor, and
27 the speaker of the house of representatives on or before December 1

1 of each even-numbered year.

2 SECTION 29. Sections 11.0236(d), (k), (l), and (m), Section
3 11.0237(c), and Section 11.1491(b), Water Code, are repealed.

4 SECTION 30. The Study Commission on Water for Environmental
5 Flows is abolished on the effective date of this Act.

6 SECTION 31. (a) The governor, lieutenant governor, and
7 speaker of the house of representatives shall appoint the initial
8 members of the Environmental Flows Commission as provided by
9 Section 11.0236, Water Code, as amended by this Act, as soon as
10 practicable on or after the effective date of this Act.

11 (b) As soon as practicable after taking office, the initial
12 members of the Environmental Flows Commission shall appoint the
13 initial members of the Texas Environmental Flows Science Advisory
14 Committee as provided by Section 11.02361, Water Code, as added by
15 this Act. The terms of the initial members of the committee expire
16 March 1, 2010.

17 (c) The Environmental Flows Commission shall appoint the
18 members of each basin and bay area stakeholders committee as
19 provided by Section 11.02362, Water Code, as added by this Act. The
20 terms of the initial members of each committee expire March 1 of the
21 fifth year that begins after the year in which the initial
22 appointments are made.

23 (d) Each basin and bay area stakeholders committee shall
24 appoint the members of the basin and bay expert science team for the
25 river basin and bay system for which the committee is established as
26 provided by Section 11.02362, Water Code, as added by this Act. The
27 terms of the initial members of each team expire April 1 of the

1 fifth year that begins after the year in which the initial
2 appointments are made.

3 (e) The executive director of the Texas Commission on
4 Environmental Quality shall appoint the members of the watermaster
5 advisory committee under Section 11.4531, Water Code, as added by
6 this Act, for each river basin or segment of a river basin for which
7 the executive director appoints a watermaster under Subchapter I,
8 Chapter 11, Water Code. The terms of the initial members of each
9 committee expire August 31 of the first odd-numbered year that
10 begins after the year in which the initial appointments are made.

11 SECTION 32. The changes in law made by this Act relating to
12 a permit for a new appropriation of water or to an amendment to an
13 existing water right that increases the amount of water authorized
14 to be stored, taken, or diverted apply only to:

15 (1) water appropriated under a permit for a new
16 appropriation of water the application for which is pending with
17 the Texas Commission on Environmental Quality on the effective date
18 of this Act or is filed with the commission on or after that date; or

19 (2) the increase in the amount of water authorized to
20 be stored, taken, or diverted under an amendment to an existing
21 water right that increases the amount of water authorized to be
22 stored, taken, or diverted and the application for which is pending
23 with the Texas Commission on Environmental Quality on the effective
24 date of this Act or is filed with the commission on or after that
25 date.

26 SECTION 33. This Act takes effect November 1, 2005.

HOUSE COMMITTEE REPORT

05 JUL 11 PM 7:16
HOUSE OF REPRESENTATIVES

1st Printing

By: Puente

H.B. No. 40

Substitute the following for H.B. No. 40:

By: Puente

C.S.H.B. No. 40

A BILL TO BE ENTITLED

AN ACT

relating to the management of the water resources of the state,
including the protection of instream flows and freshwater inflows.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The heading to Section 5.506, Water Code, is
amended to read as follows:

Sec. 5.506. EMERGENCY SUSPENSION OF PERMIT CONDITION
RELATING TO, AND EMERGENCY AUTHORITY TO MAKE AVAILABLE WATER SET
ASIDE FOR, BENEFICIAL INFLOWS TO AFFECTED BAYS AND ESTUARIES AND
INSTREAM USES.

SECTION 2. Section 5.506, Water Code, is amended by adding
Subsection (a-1) and amending Subsections (b) and (c) to read as
follows:

(a-1) State water that is set aside by the commission to
meet the needs for freshwater inflows to affected bays and
estuaries and instream uses under Section 11.1471(a)(2) may be made
available temporarily for other essential beneficial uses if the
commission finds that an emergency exists that cannot practically
be resolved in another way.

(b) The commission must give written notice of the proposed
action [~~suspension~~] to the Parks and Wildlife Department before the
commission suspends a permit condition under Subsection (a) or
makes water available temporarily under Subsection (a-1) [~~this
section~~]. The commission shall give the Parks and Wildlife

1 Department an opportunity to submit comments on the proposed action
2 [~~suspension~~] for a period of 72 hours from receipt of the notice and
3 must consider those comments before issuing an order implementing
4 the proposed action [~~imposing the suspension~~].

5 (c) The commission may suspend a permit condition under
6 Subsection (a) or make water available temporarily under Subsection
7 (a-1) [this section] without notice except as required by
8 Subsection (b).

9 SECTION 3. Section 5.701(j), Water Code, is amended to read
10 as follows:

11 (j) The fee for other uses of water not specifically named
12 in this section is \$1 per acre-foot, except that no political
13 subdivision may be required to pay fees to use water for recharge of
14 underground freshwater-bearing sands and aquifers or for abatement
15 of natural pollution. A fee is not required for a water right that
16 is [~~This fee is waived for applications for instream-use water~~
17 ~~rights~~] deposited into the Texas Water Trust.

18 SECTION 4. Section 11.002, Water Code, is amended by adding
19 Subdivisions (15), (16), (17), (18), and (19) to read as follows:

20 (15) "Environmental flow analysis" means the
21 application of a scientifically derived process for predicting the
22 response of an ecosystem to changes in instream flows or freshwater
23 inflows.

24 (16) "Environmental flow regime" means a schedule of
25 flow quantities that reflects seasonal and yearly fluctuations that
26 typically would vary geographically, by specific location in a
27 watershed, and that are shown to be adequate to support a sound

ecological environment and to maintain the productivity, extent, and persistence of key aquatic habitats in and along the affected water bodies.

(17) "Environmental flow standards" means those requirements adopted by the commission under Section 11.1471.

(18) "Flows commission" means the Environmental Flows Commission.

(19) "Science advisory committee" means the Texas Environmental Flows Science Advisory Committee.

SECTION 5. Section 11.023(a), Water Code, is amended to read as follows:

(a) To the extent that state water has not been set aside by the commission under Section 11.1471(a)(2) to meet downstream instream flow needs or freshwater inflow needs, state [State] water may be appropriated, stored, or diverted for:

(1) domestic and municipal uses, including water for sustaining human life and the life of domestic animals;

(2) agricultural uses and industrial uses, meaning processes designed to convert materials of a lower order of value into forms having greater usability and commercial value, including the development of power by means other than hydroelectric;

(3) mining and recovery of minerals;

(4) hydroelectric power;

(5) navigation;

(6) recreation and pleasure;

(7) public parks; and

(8) game preserves.

SECTION 6. Section 11.0235, Water Code, is amended by amending Subsections (c) and (e) and adding Subsections (d-1) through (d-5) and (f) to read as follows:

(c) The legislature has expressly required the commission while balancing all other public interests to consider and, to the extent practicable, provide for the freshwater inflows and instream flows necessary to maintain the viability of the state's streams, rivers, and bay and estuary systems in the commission's regular granting of permits for the use of state waters. As an essential part of the state's environmental flows policy, all permit conditions relating to freshwater inflows to affected bays and estuaries and instream flow needs must be subject to temporary suspension if necessary for water to be applied to essential beneficial uses during emergencies.

(d-1) The legislature finds that to provide certainty in water management and development and to provide adequate protection of the state's streams, rivers, and bays and estuaries, the state must have a process with specific timelines for prompt action to address environmental flow issues in the state's major basin and bay systems, especially those systems in which unappropriated water is still available.

(d-2) The legislature finds that:

(1) in those basins in which water is available for appropriation, the commission should establish an environmental set-aside below which water should not be available for appropriation; and

(2) in those basins in which the unappropriated water

1 that will be set aside for instream flow and freshwater inflow
2 protection is not sufficient to fully satisfy the environmental
3 flow standards established by the commission, a variety of market
4 approaches, both public and private, for filling the gap must be
5 explored and pursued.

6 (d-3) The legislature finds that while the state has
7 pioneered tools to address freshwater inflow needs for bays and
8 estuaries, there are limitations to those tools in light of both
9 scientific and public policy evolution. To fully address bay and
10 estuary environmental flow issues, the foundation of work
11 accomplished by the state should be improved. While the state's
12 instream flow studies program appears to encompass a comprehensive
13 and scientific approach for establishing a process to assess
14 instream flow needs for rivers and streams across the state, more
15 extensive review and examination of the details of the program,
16 which may not be fully developed until the program is under way, are
17 needed to ensure an effective tool for evaluating riverine
18 environmental flow conditions.

19 (d-4) The legislature finds that the management of water to
20 meet instream flow and freshwater inflow needs should be evaluated
21 on a regular basis and adapted to reflect both improvements in
22 science related to environmental flows and future changes in
23 projected human needs for water. In addition, the development of
24 management strategies for addressing environmental flow needs
25 should be an ongoing, adaptive process that considers and addresses
26 local issues.

27 (d-5) The legislature finds that recommendations for state

1 action to protect instream flows and freshwater inflows should be
2 developed through a consensus-based, regional approach involving
3 balanced representation of stakeholders and that such a process
4 should be encouraged throughout the state.

5 (e) The fact that greater pressures and demands are being
6 placed on the water resources of the state makes it of paramount
7 importance to ensure [~~reexamine the process for ensuring~~] that
8 these important priorities are effectively addressed by detailing
9 how environmental flow standards are to be developed using the
10 environmental studies that have been and are to be performed by the
11 state and others and specifying in clear delegations of authority
12 how those environmental flow standards will be integrated into the
13 regional water planning and water permitting process [~~to the~~
14 ~~commission~~].

15 (f) The legislature recognizes that effective
16 implementation of the approach provided by this chapter for
17 protecting instream flows and freshwater inflows will require more
18 effective water rights administration and enforcement systems than
19 are currently available in most areas of the state.

20 SECTION 7. (a) This section takes effect only if this Act
21 takes effect immediately. If this Act does not take effect
22 immediately, this section has no effect.

23 (b) The heading to Section 11.0236, Water Code, is amended
24 to read as follows:

25 Sec. 11.0236. [~~STUDY COMMISSION ON WATER FOR~~] ENVIRONMENTAL
26 FLOWS COMMISSION.

27 (c) Section 11.0236, Water Code, is amended by amending

Subsections (a), (b), (c), (e) through (j), (n), and (o) and adding Subsection (p) to read as follows:

(a) In recognition of the importance that the ecological soundness of our riverine, bay, and estuary systems and riparian lands has on the economy, health, and well-being of the state there is created the ~~[Study Commission on Water for]~~ Environmental Flows Commission.

(b) The flows ~~[study]~~ commission is composed of nine ~~[15]~~ members as follows:

(1) five ~~[two]~~ members appointed by the governor;

(2) two ~~[five]~~ members of the senate appointed by the lieutenant governor; and

(3) two ~~[five]~~ members of the house of representatives appointed by the speaker of the house of representatives[+]

~~[(4) the presiding officer of the commission or the presiding officer's designee,~~

~~[(5) the chairman of the board or the chairman's designee, and~~

~~[(6) the presiding officer of the Parks and Wildlife Commission or the presiding officer's designee].~~

(c) Of the members appointed under Subsection (b)(1):

(1) one member must be a member of the commission;

(2) one member must be a member of the board;

(3) one member must be a member of the Parks and Wildlife Commission; and

(4) two members must represent the public ~~[(b)(2):~~

~~[(1) one member must represent a river authority or~~

1 ~~municipal water supply agency or authority,~~

2 ~~[(2) one member must represent an entity that is~~
3 ~~distinguished by its efforts in resource protection, and~~

4 ~~[(3) three members must be members of the senate].~~

5 (e) Each ~~[appointed]~~ member of the flows ~~[study]~~ commission
6 serves at the will of the person who appointed the member.

7 (f) The appointed senator with the most seniority and the
8 appointed house member with the most seniority serve together as
9 co-presiding officers of the flows ~~[study]~~ commission.

10 (g) A member of the flows ~~[study]~~ commission is not entitled
11 to receive compensation for service on the flows ~~[study]~~ commission
12 but is entitled to reimbursement of the travel expenses incurred by
13 the member while conducting the business of the flows ~~[study]~~
14 commission, as provided by the General Appropriations Act.

15 (h) The flows ~~[study]~~ commission may accept gifts and grants
16 from any source to be used to carry out a function of the flows
17 ~~[study]~~ commission.

18 (i) The commission shall provide staff support for the flows
19 ~~[study]~~ commission.

20 (j) The flows ~~[study]~~ commission shall conduct public
21 hearings and study public policy implications for balancing the
22 demands on the water resources of the state resulting from a growing
23 population with the requirements of the riverine, bay, and estuary
24 systems including granting permits for instream flows dedicated to
25 environmental needs or bay and estuary inflows, use of the Texas
26 Water Trust, and any other issues that the flows ~~[study]~~ commission
27 determines have importance and relevance to the protection of

environmental flows. In evaluating the options for providing adequate environmental flows, the flows [~~study~~] commission shall take notice of the strong public policy imperative that exists in this state recognizing that environmental flows are important to the biological health of our public and private lands, streams and rivers [~~parks, game preserves~~], and bay and estuary systems and are high priorities in the water management [~~permitting~~] process. The flows [~~study~~] commission shall specifically address:

(1) ways that the ecological soundness of those [~~these~~] systems will be ensured in the water rights administration and enforcement and water allocation processes; and

(2) appropriate methods to encourage persons voluntarily to convert reasonable amounts of existing water rights to use for environmental flow protection temporarily or permanently [~~process~~].

(n) The flows [~~study~~] commission may [~~shall~~] adopt rules, procedures, and policies as needed to administer this section, to implement its responsibilities, and to exercise its authority under Sections 11.02361 and 11.02362.

(o) Chapter 2110, Government Code, does not apply to the size, composition, or duration of the flows commission.

(p) Not later than December 1, 2006, and every two years thereafter, the flows commission shall issue and promptly deliver to the governor, lieutenant governor, and speaker of the house of representatives copies of a report summarizing:

(1) any hearings conducted by the flows commission;

(2) any studies conducted by the flows commission;

1 (3) any legislation proposed by the flows commission;

2 (4) progress made in implementing Sections 11.02361
3 and 11.02362; and

4 (5) any other findings and recommendations of the
5 flows commission [~~The study commission is abolished and this~~
6 ~~section expires September 1, 2005~~].

7 SECTION 8. (a) This section takes effect only if this Act
8 does not take effect immediately. If this Act takes effect
9 immediately, this section has no effect.

10 (b) Subchapter B, Chapter 11, Water Code, is amended by
11 adding Section 11.0236 to read as follows:

12 Sec. 11.0236. ENVIRONMENTAL FLOWS COMMISSION. (a) In
13 recognition of the importance that the ecological soundness of our
14 riverine, bay, and estuary systems and riparian lands has on the
15 economy, health, and well-being of the state there is created the
16 Environmental Flows Commission.

17 (b) The flows commission is composed of nine members as
18 follows:

19 (1) five members appointed by the governor;

20 (2) two members of the senate appointed by the
21 lieutenant governor; and

22 (3) two members of the house of representatives
23 appointed by the speaker of the house of representatives.

24 (c) Of the members appointed under Subsection (b)(1):

25 (1) one member must be a member of the commission;

26 (2) one member must be a member of the board;

27 (3) one member must be a member of the Parks and

1 Wildlife Commission; and

2 (4) two members must represent the public.

3 (e) Each member of the flows commission serves at the will
4 of the person who appointed the member.

5 (f) The appointed senator with the most seniority and the
6 appointed house member with the most seniority serve together as
7 co-presiding officers of the flows commission.

8 (g) A member of the flows commission is not entitled to
9 receive compensation for service on the flows commission but is
10 entitled to reimbursement of the travel expenses incurred by the
11 member while conducting the business of the flows commission, as
12 provided by the General Appropriations Act.

13 (h) The flows commission may accept gifts and grants from
14 any source to be used to carry out a function of the flows
15 commission.

16 (i) The commission shall provide staff support for the flows
17 commission.

18 (j) The flows commission shall conduct public hearings and
19 study public policy implications for balancing the demands on the
20 water resources of the state resulting from a growing population
21 with the requirements of the riverine, bay, and estuary systems
22 including granting permits for instream flows dedicated to
23 environmental needs or bay and estuary inflows, use of the Texas
24 Water Trust, and any other issues that the flows commission
25 determines have importance and relevance to the protection of
26 environmental flows. In evaluating the options for providing
27 adequate environmental flows, the flows commission shall take

notice of the strong public policy imperative that exists in this state recognizing that environmental flows are important to the biological health of our public and private lands, streams and rivers, and bay and estuary systems and are high priorities in the water management process. The flows commission shall specifically address:

(1) ways that the ecological soundness of those systems will be ensured in the water rights administration and enforcement and water allocation processes; and

(2) appropriate methods to encourage persons voluntarily to convert reasonable amounts of existing water rights to use for environmental flow protection temporarily or permanently.

(n) The flows commission may adopt rules, procedures, and policies as needed to administer this section, to implement its responsibilities, and to exercise its authority under Sections 11.02361 and 11.02362.

(o) Chapter 2110, Government Code, does not apply to the size, composition, or duration of the flows commission.

(p) Not later than December 1, 2006, and every two years thereafter, the flows commission shall issue and promptly deliver to the governor, lieutenant governor, and speaker of the house of representatives copies of a report summarizing:

(1) any hearings conducted by the flows commission;

(2) any studies conducted by the flows commission;

(3) any legislation proposed by the flows commission;

(4) progress made in implementing Sections 11.02361

1 and 11.02362; and

2 (5) any other findings and recommendations of the
3 flows commission.

4 SECTION 9. Subchapter B, Chapter 11, Water Code, is amended
5 by adding Sections 11.02361 and 11.02362 to read as follows:

6 Sec. 11.02361. TEXAS ENVIRONMENTAL FLOWS SCIENCE ADVISORY
7 COMMITTEE. (a) The Texas Environmental Flows Science Advisory
8 Committee consists of at least five but not more than nine members
9 appointed by the flows commission.

10 (b) The flows commission shall appoint to the science
11 advisory committee persons who will provide an objective
12 perspective and diverse technical expertise, including expertise
13 in hydrology, hydraulics, water resources, aquatic and terrestrial
14 biology, geomorphology, geology, water quality, computer modeling,
15 and other technical areas pertinent to the evaluation of
16 environmental flows.

17 (c) Members of the science advisory committee serve
18 five-year terms expiring March 1. A vacancy on the science advisory
19 committee is filled by appointment by the co-presiding officers of
20 the flows commission for the unexpired term.

21 (d) Chapter 2110, Government Code, does not apply to the
22 size, composition, or duration of the science advisory committee.

23 (e) The science advisory committee shall:

24 (1) serve as an objective scientific body to advise
25 and make recommendations to the flows commission on issues relating
26 to the science of environmental flow protection; and

27 (2) develop recommendations to help provide overall

direction, coordination, and consistency relating to:

(A) environmental flow methodologies for bay and estuary studies and instream flow studies;

(B) environmental flow programs at the commission, the Parks and Wildlife Department, and the board; and

(C) the work of the basin and bay expert science teams described in Section 11.02362.

(f) To assist the flows commission to assess the extent to which the recommendations of the science advisory committee are considered and implemented, the commission, the Parks and Wildlife Department, and the board shall provide written reports to the flows commission, at intervals determined by the flows commission, that describe:

(1) the actions taken by each agency in response to each recommendation; and

(2) for each recommendation not implemented, the reason it was not implemented.

Sec. 11.02362. DEVELOPMENT OF ENVIRONMENTAL FLOW REGIME RECOMMENDATIONS. (a) For the purposes of this section, the flows commission, not later than January 1, 2006, shall define the geographical extent of each river basin and bay system in this state for the sole purpose of developing environmental flow regime recommendations under this section and adoption of environmental flow standards under Section 11.1471.

(b) The flows commission shall give priority in descending order to the following river basin and bay systems of the state for the purpose of developing environmental flow regime

recommendations and adopting environmental flow standards:

(1) the river basin and bay system consisting of the Trinity and San Jacinto Rivers and Galveston Bay and the river basin and bay system consisting of the Sabine and Neches Rivers and Sabine Lake Bay;

(2) the river basin and bay system consisting of the Colorado and Lavaca Rivers and Matagorda and Lavaca Bays and the river basin and bay system consisting of the Guadalupe, San Antonio, and Aransas Rivers and Copano, Aransas, and San Antonio Bays; and

(3) the river basin and bay system consisting of the Nueces River and Corpus Christi and Baffin Bays, the river basin and bay system consisting of the Rio Grande, the Rio Grande estuary, and the Lower Laguna Madre, and the Brazos River and its associated bay and estuary system.

(c) For the river basin and bay systems listed in Subsection (b)(1):

(1) the flows commission shall appoint the basin and bay area stakeholders committee not later than January 1, 2006;

(2) the basin and bay area stakeholders committee shall establish a basin and bay expert science team not later than March 1, 2006;

(3) the basin and bay expert science team shall finalize environmental flow regime recommendations and submit them to the basin and bay area stakeholders committee, the flows commission, and the commission not later than March 1, 2007;

(4) the basin and bay area stakeholders committee

1 shall submit to the commission its comments on and recommendations
2 regarding the basin and bay expert science team's recommended
3 environmental flow regime not later than September 1, 2007; and

4 (5) the commission shall adopt the environmental flow
5 standards as provided by Section 11.1471 not later than September
6 1, 2008.

7 (d) The flows commission shall appoint the basin and bay
8 area stakeholders committees for the river basin and bay systems
9 listed in Subsection (b)(2) not later than September 1, 2006, and
10 shall appoint the basin and bay area stakeholders committees for
11 the river basin and bay systems listed in Subsection (b)(3) not
12 later than September 1, 2007. The flows commission shall establish
13 a schedule for the performance of the tasks listed in Subsections
14 (c)(2)-(5) with regard to the river basin and bay systems listed in
15 Subsections (b)(2) and (3) that will result in the adoption of
16 environmental flow standards for that river basin and bay system by
17 the commission as soon as is reasonably possible. Each basin and
18 bay area stakeholders committee and basin and bay expert science
19 team for a river basin and bay system listed in Subsection (b)(2) or
20 (3) shall make recommendations to the flows commission with regard
21 to the schedule applicable to that river basin and bay system. The
22 flows commission shall consider the recommendations of the basin
23 and bay area stakeholders committee and basin and bay expert
24 science team as well as coordinate with, and give appropriate
25 consideration to the recommendations of, the commission, the Parks
26 and Wildlife Department, and the board in establishing the
27 schedule.

1 (e) For a river basin and bay system or a river basin that
2 does not have an associated bay system in this state not listed in
3 Subsection (b), the flows commission shall establish a schedule for
4 the development of environmental flow regime recommendations and
5 the adoption of environmental flow standards. The flows commission
6 shall develop the schedule in consultation with the commission, the
7 Parks and Wildlife Department, the board, and the pertinent basin
8 and bay area stakeholders committee and basin and bay expert
9 science team. The flows commission may, on its own initiative or on
10 request, modify a schedule established under this subsection to be
11 more responsive to particular circumstances, local desires,
12 changing conditions, or time-sensitive conflicts. This subsection
13 does not prohibit, in a river basin and bay system for which the
14 flows commission has not yet established a schedule for the
15 development of environmental flow regime recommendations and the
16 adoption of environmental flow standards, an effort to develop
17 information on environmental flow needs and ways in which those
18 needs can be met by a voluntary consensus-building process.

19 (f) The flows commission shall appoint a basin and bay area
20 stakeholders committee for each river basin and bay system in this
21 state for which a schedule for the development of environmental
22 flow regime recommendations and the adoption of environmental flow
23 standards is specified by or established under Subsection (c), (d),
24 or (e). Chapter 2110, Government Code, does not apply to the size,
25 composition, or duration of a basin and bay area stakeholders
26 committee. Each committee must consist of at least 17 members. The
27 members must represent appropriate stakeholders, including

1 representatives of:

- 2 (1) agricultural water users;
3 (2) recreational water users, including coastal
4 recreational anglers and businesses supporting water recreation;
5 (3) municipalities;
6 (4) soil and water conservation districts;
7 (5) industrial water users, including representatives
8 of both the manufacturing and refining sectors;
9 (6) commercial fishermen;
10 (7) public interest groups;
11 (8) regional water planning groups;
12 (9) groundwater conservation districts;
13 (10) river authorities and other conservation and
14 reclamation districts with jurisdiction over surface water; and
15 (11) environmental interests.

16 (g) Members of a basin and bay area stakeholders committee
17 serve five-year terms expiring March 1. If a vacancy occurs on a
18 committee, the remaining members of the committee by majority vote
19 shall appoint a member to serve the remainder of the unexpired term.

20 (h) Meetings of a basin and bay area stakeholders committee
21 must be open to the public.

22 (i) Each basin and bay area stakeholders committee shall
23 establish a basin and bay expert science team for the river basin
24 and bay system for which the committee is established. The basin
25 and bay expert science team must be established not later than six
26 months after the date the basin and bay area stakeholders committee
27 is established. Chapter 2110, Government Code, does not apply to

1 the size, composition, or duration of a basin and bay expert science
2 team. Each basin and bay expert science team must be composed of
3 technical experts with special expertise regarding the river basin
4 and bay system or regarding the development of environmental flow
5 regimes. A person may serve as a member of more than one basin and
6 bay expert science team at the same time.

7 (j) The members of a basin and bay expert science team serve
8 five-year terms expiring April 1. A vacancy on a basin and bay
9 expert science team is filled by appointment by the pertinent basin
10 and bay area stakeholders committee to serve the remainder of the
11 unexpired term.

12 (k) The science advisory committee shall appoint one of its
13 members to serve as a liaison to each basin and bay expert science
14 team to facilitate coordination and consistency in environmental
15 flow activities throughout the state. The commission, the Parks
16 and Wildlife Department, and the board shall provide technical
17 assistance to each basin and bay expert science team, including
18 information about the studies conducted under Sections 16.058 and
19 16.059, and may serve as nonvoting members of the basin and bay
20 expert science team to facilitate the development of environmental
21 flow regime recommendations.

22 (l) Where reasonably practicable, meetings of a basin and
23 bay expert science team must be open to the public.

24 (m) Each basin and bay expert science team shall develop
25 environmental flow analyses and a recommended environmental flow
26 regime for the river basin and bay system for which the team is
27 established through a collaborative process designed to achieve a

1 consensus. In developing the analyses and recommendations, the
2 science team must consider all reasonably available science,
3 without regard to the need for the water for other uses, and the
4 science team's recommendations must be based solely on the best
5 science available. For the Rio Grande below Fort Quitman, any uses
6 attributable to Mexican water flows must be excluded from
7 environmental flow regime recommendations.

8 (n) Each basin and bay expert science team shall submit its
9 environmental flow analyses and environmental flow regime
10 recommendations to the pertinent basin and bay area stakeholders
11 committee, the flows commission, and the commission in accordance
12 with the applicable schedule specified by or established under
13 Subsection (c), (d), or (e). The basin and bay area stakeholders
14 committee and the flows commission may not change the environmental
15 flow analyses or environmental flow regime recommendations of the
16 basin and bay expert science team.

17 (o) Each basin and bay area stakeholders committee shall
18 review the environmental flow analyses and environmental flow
19 regime recommendations submitted by the committee's basin and bay
20 expert science team and shall consider them in conjunction with
21 other factors, including the present and future needs for water for
22 other uses related to water supply planning in the pertinent river
23 basin and bay system. For the Rio Grande, the basin and bay area
24 stakeholders committee shall also consider the water accounting
25 requirements for any international water sharing treaty, minutes,
26 and agreement applicable to the Rio Grande and the effects on
27 allocation of water by the Rio Grande watermaster in the middle and

1 lower Rio Grande. The Rio Grande basin and bay expert science team
2 may not recommend any environmental flow regime that would result
3 in a violation of a treaty or court decision. The basin and bay area
4 stakeholders committee shall develop recommendations regarding
5 environmental flow standards and strategies to meet the
6 environmental flow standards and submit those recommendations to
7 the commission and to the flows commission in accordance with the
8 applicable schedule specified by or established under Subsection
9 (c), (d), or (e). In developing its recommendations, the basin and
10 bay area stakeholders committee shall operate on a consensus basis
11 to the maximum extent possible.

12 (p) In recognition of the importance of adaptive
13 management, after submitting its recommendations regarding
14 environmental flow standards and strategies to meet the
15 environmental flow standards to the commission, each basin and bay
16 area stakeholders committee, with the assistance of the pertinent
17 basin and bay expert science team, shall prepare and submit for
18 approval by the flows commission a work plan. The work plan must:

19 (1) establish a periodic review of the basin and bay
20 environmental flow analyses and environmental flow regime
21 recommendations, environmental flow standards, and strategies, to
22 occur at least once every 10 years;

23 (2) prescribe specific monitoring, studies, and
24 activities; and

25 (3) establish a schedule for continuing the validation
26 or refinement of the basin and bay environmental flow analyses and
27 environmental flow regime recommendations, the environmental flow

standards adopted by the commission, and the strategies to achieve those standards.

(q) In accordance with the applicable schedule specified by or established under Subsection (c), (d), or (e), the flows commission, with input from the science advisory committee, shall review the environmental flow analyses and environmental flow regime recommendations submitted by each basin and bay expert science team. If appropriate, the flows commission shall submit comments on the analyses and recommendations to the commission for use by the commission in adopting rules under Section 11.1471. Comments must be submitted not later than six months after the date of receipt of the analyses and recommendations.

(r) In the event the commission, by permit or order, has established an estuary advisory council, that council may continue in full force and effect.

SECTION 10. (a) This section takes effect only if this Act takes effect immediately. If this Act does not take effect immediately, this section has no effect.

(b) Sections 11.0237(a) and (b), Water Code, are amended to read as follows:

(a) The commission may not issue a new permit for instream flows dedicated to environmental needs or bay and estuary inflows. The [This section does not prohibit the] commission may approve [from issuing] an application to amend [amendment to] an existing permit or certificate of adjudication to change the use to or add a use for instream flows dedicated to environmental needs or bay and estuary inflows.

(b) This section does not alter the commission's obligations under Section 11.042(b) or (c), 11.046(b), 11.085(k)(2)(F), 11.134(b)(3)(D), 11.147, 11.1471, 11.1491, 11.150, 11.152, 16.058, or 16.059.

SECTION 11. (a) This section takes effect only if this Act does not take effect immediately. If this Act takes effect immediately, this section has no effect.

(b) Subchapter B, Chapter 11, Water Code, is amended by adding Section 11.0237 to read as follows:

Sec. 11.0237. WATER RIGHTS FOR INSTREAM FLOWS DEDICATED TO ENVIRONMENTAL NEEDS OR BAY AND ESTUARY INFLOWS. (a) The commission may not issue a new permit for instream flows dedicated to environmental needs or bay and estuary inflows. The commission may approve an application to amend an existing permit or certificate of adjudication to change the use to or add a use for instream flows dedicated to environmental needs or bay and estuary inflows.

(b) This section does not alter the commission's obligations under Section 11.042(b) or (c), 11.046(b), 11.085(k)(2)(F), 11.134(b)(3)(D), 11.147, 11.1471, 11.1491, 11.150, 11.152, 16.058, or 16.059.

SECTION 12. Section 11.082(b), Water Code, is amended to read as follows:

(b) The state may recover the penalties prescribed in Subsection (a) ~~[of this section]~~ by suit brought for that purpose in a court of competent jurisdiction. The state may seek those penalties regardless of whether a watermaster has been appointed for the water division, river basin, or segment of a river basin

1 where the unlawful use is alleged to have occurred.

2 SECTION 13. Section 11.0841, Water Code, is amended by
3 adding Subsection (c) to read as follows:

4 (c) For purposes of this section, the Parks and Wildlife
5 Department has:

6 (1) the rights of a holder of a water right that is
7 held in the Texas Water Trust, including the right to file suit in a
8 civil court to prevent the unlawful use of such a right;

9 (2) the right to act in the same manner that a holder
10 of a water right may act to protect the holder's rights in seeking
11 to prevent any person from appropriating water in violation of a
12 set-aside established by the commission under Section 11.1471 to
13 meet instream flow needs or freshwater inflow needs; and

14 (3) the right to file suit in a civil court to prevent
15 the unlawful use of a set-aside established under Section 11.1471.

16 SECTION 14. Section 11.0842(a), Water Code, is amended to
17 read as follows:

18 (a) If a person violates this chapter, a rule or order
19 adopted under this chapter or Section 16.236 [~~of this code~~], or a
20 permit, certified filing, or certificate of adjudication issued
21 under this chapter, the commission may assess an administrative
22 penalty against that person as provided by this section. The
23 commission may assess an administrative penalty for a violation
24 relating to a water division or a river basin or segment of a river
25 basin regardless of whether a watermaster has been appointed for
26 the water division or river basin or segment of the river basin.

27 SECTION 15. Section 11.0843(a), Water Code, is amended to

1 read as follows:

2 (a) Upon witnessing a violation of this chapter or a rule or
3 order or a water right issued under this chapter, the executive
4 director or a person designated by the executive director,
5 including a watermaster or the watermaster's deputy, [as defined by
6 commission rule,] may issue the alleged violator a field citation
7 alleging that a violation has occurred and providing the alleged
8 violator the option of either:

9 (1) without admitting to or denying the alleged
10 violation, paying an administrative penalty in accordance with the
11 predetermined penalty amount established under Subsection (b) [~~of~~
12 ~~this section~~] and taking remedial action as provided in the
13 citation; or

14 (2) requesting a hearing on the alleged violation in
15 accordance with Section 11.0842 [~~of this code~~].

16 SECTION 16. Section 11.134(b), Water Code, is amended to
17 read as follows:

18 (b) The commission shall grant the application only if:

19 (1) the application conforms to the requirements
20 prescribed by this chapter and is accompanied by the prescribed
21 fee;

22 (2) unappropriated water is available in the source of
23 supply;

24 (3) the proposed appropriation:

25 (A) is intended for a beneficial use;

26 (B) does not impair existing water rights or
27 vested riparian rights;

(C) is not detrimental to the public welfare;

(D) considers any applicable environmental flow standards established under Section 11.1471 and, if applicable, the assessments performed under Sections 11.147(d) and (e) and Sections 11.150, 11.151, and 11.152; and

(E) addresses a water supply need in a manner that is consistent with the state water plan and the relevant approved regional water plan for any area in which the proposed appropriation is located, unless the commission determines that conditions warrant waiver of this requirement; and

(4) the applicant has provided evidence that reasonable diligence will be used to avoid waste and achieve water conservation as defined by [~~Subdivision (8)(B),~~] Section 11.002(8)(B) [11.002].

SECTION 17. Section 11.147, Water Code, is amended by amending Subsections (b), (d), and (e) and adding Subsections (e-1), (e-2), and (e-3) to read as follows:

(b) In its consideration of an application for a permit to store, take, or divert water, the commission shall assess the effects, if any, of the issuance of the permit on the bays and estuaries of Texas. For permits issued within an area that is 200 river miles of the coast, to commence from the mouth of the river thence inland, the commission shall include in the permit any conditions considered necessary to maintain freshwater inflows to any affected bay and estuary system, to the extent practicable when considering all public interests and the studies mandated by Section 16.058 as evaluated under Section 11.1491[, ~~those~~

~~conditions considered necessary to maintain beneficial inflows to
any affected bay and estuary system].~~

(d) In its consideration of an application to store, take, or divert water, the commission shall include in the permit, to the extent practicable when considering all public interests, those conditions considered by the commission necessary to maintain existing instream uses and water quality of the stream or river to which the application applies. In determining what conditions to include in the permit under this subsection, the commission shall consider among other factors:

(1) the studies mandated by Section 16.059; and

(2) any water quality assessment performed under
Section 11.150.

(e) The commission shall include in the permit, to the extent practicable when considering all public interests, those conditions considered by the commission necessary to maintain fish and wildlife habitats. In determining what conditions to include in the permit under this subsection, the commission shall consider any assessment performed under Section 11.152.

(e-1) Any permit for a new appropriation of water or an amendment to an existing water right that increases the amount of water authorized to be stored, taken, or diverted must include a provision allowing the commission to adjust the conditions included in the permit or amended water right to provide for protection of instream flows or freshwater inflows. With respect to an amended water right, the provision may not allow the commission to adjust a condition of the amendment other than a condition that applies only

to the increase in the amount of water to be stored, taken, or diverted authorized by the amendment. This subsection does not affect an appropriation of or an authorization to store, take, or divert water under a permit or amendment to a water right issued before November 1, 2005. The commission shall adjust the conditions if the commission determines, through an expedited public comment process, that such an adjustment is appropriate to achieve compliance with applicable environmental flow standards adopted under Section 11.1471. The adjustment:

(1) in combination with any previous adjustments made under this subsection may not increase the amount of the pass-through or release requirement for the protection of instream flows or freshwater inflows by more than 12.5 percent of the annualized total of that requirement contained in the permit as issued or of that requirement contained in the amended water right and applicable only to the increase in the amount of water authorized to be stored, taken, or diverted under the amended water right;

(2) must be based on appropriate consideration of the priority dates and diversion locations of any other water rights granted in the same river basin that are subject to adjustment under this subsection; and

(3) must be based on appropriate consideration of any voluntary contributions to the Texas Water Trust that contribute toward meeting the environmental flow standards.

(e-2) Any water right holder making a contribution described by Subsection (e-1)(3) is entitled to appropriate credit

1 of such benefits against adjustments of the holder's water right
2 pursuant to Subsection (e-1)(1).

3 (e-3) Notwithstanding Subsections (b)-(e), for the purpose
4 of determining the environmental flow conditions necessary to
5 maintain freshwater inflows to an affected bay and estuary system,
6 existing instream uses and water quality of a stream or river, or
7 fish and aquatic wildlife habitats, the commission shall apply any
8 applicable environmental flow standard, including any
9 environmental flow set-aside, adopted under Section 11.1471
10 instead of considering the factors specified by those subsections.

11 SECTION 18. Subchapter D, Chapter 11, Water Code, is
12 amended by adding Section 11.1471 to read as follows:

13 Sec. 11.1471. ENVIRONMENTAL FLOW STANDARDS AND SET-ASIDES.

14 (a) The commission by rule shall:

15 (1) adopt appropriate environmental flow standards
16 for each river basin and bay system in this state that are adequate
17 to support a sound ecological environment, to the maximum extent
18 reasonable considering other public interests and other relevant
19 factors;

20 (2) establish an amount of unappropriated water, if
21 available, to be set aside to satisfy the environmental flow
22 standards to the maximum extent reasonable when considering human
23 water needs; and

24 (3) establish procedures for implementing an
25 adjustment of the conditions included in a permit or an amended
26 water right as provided by Sections 11.147(e-1) and (e-2).

27 (b) In adopting environmental flow standards for a river

1 basin and bay system under Subsection (a)(1), the commission shall
2 consider:

3 (1) the definition of the geographical extent of the
4 river basin and bay system adopted by the flows commission under
5 Section 11.02362(a) and the definition and designation of the river
6 basin by the board under Section 16.051(c);

7 (2) the schedule for the adoption of environmental
8 flow standards for the river basin and bay system established by the
9 flows commission under Section 11.02362(d) or (e), if applicable;

10 (3) the environmental flow analyses and the
11 recommended environmental flow regime developed by the applicable
12 basin and bay expert science team under Section 11.02362(m);

13 (4) the recommendations regarding environmental flow
14 standards and strategies to meet the flow standards developed by
15 the applicable basin and bay area stakeholders committee under
16 Section 11.02362(o);

17 (5) the specific characteristics of the river basin
18 and bay system;

19 (6) economic factors;

20 (7) the human and other competing water needs in the
21 river basin and bay system;

22 (8) all reasonably available scientific information,
23 including any scientific information provided by the science
24 advisory committee; and

25 (9) any other appropriate information.

26 (c) Environmental flow standards adopted under Subsection
27 (a)(1) must consist of a schedule of flow quantities, reflecting

1 seasonal and yearly fluctuations that may vary geographically by
2 specific location in a river basin and bay system.

3 (d) As provided by Section 11.023, the commission may not
4 issue a permit for a new appropriation or an amendment to an
5 existing water right that increases the amount of water authorized
6 to be stored, taken, or diverted if the issuance of the permit or
7 amendment would impair an environmental flow set-aside established
8 under Subsection (a)(2). A permit for a new appropriation or an
9 amendment to an existing water right that increases the amount of
10 water authorized to be stored, taken, or diverted that is issued
11 after the adoption of an applicable environmental flow set-aside
12 must contain appropriate conditions to ensure protection of the
13 environmental flow set-aside.

14 (e) An environmental flow set-aside established under
15 Subsection (a)(2) for a river basin and bay system other than the
16 middle and lower Rio Grande must be assigned a priority date
17 corresponding to the date the commission receives environmental
18 flow regime recommendations from the applicable basin and bay
19 expert science team and be included in the appropriate water
20 availability models in connection with an application for a permit
21 for a new appropriation or for an amendment to an existing water
22 right that increases the amount of water authorized to be stored,
23 taken, or diverted.

24 (f) An environmental flow standard or environmental flow
25 set-aside adopted under Subsection (a) may be altered by the
26 commission in a rulemaking process undertaken in accordance with a
27 schedule established by the commission. The commission's schedule

1 may not provide for the rulemaking process to occur more frequently
2 than once every 10 years unless the applicable work plan approved by
3 the flows commission under Section 11.02362(p) provides for a
4 periodic review under that section to occur more frequently than
5 once every 10 years. In that event, the commission may provide for
6 the rulemaking process to be undertaken in conjunction with the
7 periodic review if the commission determines that schedule to be
8 appropriate.

9 SECTION 19. The heading to Section 11.148, Water Code, is
10 amended to read as follows:

11 Sec. 11.148. EMERGENCY SUSPENSION OF PERMIT CONDITIONS AND
12 EMERGENCY AUTHORITY TO MAKE AVAILABLE WATER SET ASIDE FOR
13 ENVIRONMENTAL FLOWS.

14 SECTION 20. Section 11.148, Water Code, is amended by
15 adding Subsection (a-1) and amending Subsections (b) and (c) to
16 read as follows:

17 (a-1) State water that is set aside by the commission to
18 meet the needs for freshwater inflows to affected bays and
19 estuaries and instream uses under Section 11.1471(a)(2) may be made
20 available temporarily for other essential beneficial uses if the
21 commission finds that an emergency exists that cannot practically
22 be resolved in another way.

23 (b) Before the commission suspends a permit condition under
24 Subsection (a) or makes water available temporarily under
25 Subsection (a-1) [of this section], it must give written notice to
26 the Parks and Wildlife Department of the proposed action
27 [suspension]. The commission shall give the Parks and Wildlife

1 Department an opportunity to submit comments on the proposed action
2 [~~suspension~~] within 72 hours from such time and the commission
3 shall consider those comments before issuing its order implementing
4 the proposed action [~~imposing the suspension~~].

5 (c) The commission may suspend the permit condition under
6 Subsection (a) or make water available temporarily under Subsection
7 (a-1) without notice to any other interested party other than the
8 Parks and Wildlife Department as provided by Subsection (b) [~~of~~
9 ~~this section~~]. However, all affected persons shall be notified
10 immediately by publication, and a hearing to determine whether the
11 suspension should be continued shall be held within 15 days of the
12 date on which the order to suspend is issued.

13 SECTION 21. Section 11.1491(a), Water Code, is amended to
14 read as follows:

15 (a) The Parks and Wildlife Department and the commission
16 shall have joint responsibility to review the studies prepared
17 under Section 16.058 [~~of this code~~], to determine inflow conditions
18 necessary for the bays and estuaries, and to provide information
19 necessary for water resources management. Each agency shall
20 designate an employee to share equally in the oversight of the
21 program. Other responsibilities shall be divided between the Parks
22 and Wildlife Department and the commission to maximize present
23 in-house capabilities of personnel and to minimize costs to the
24 state. Each agency shall have reasonable access to all information
25 produced by the other agency. Publication of reports completed
26 under this section shall be submitted for comment to [~~both~~] the
27 commission, [~~and~~] the Parks and Wildlife Department, the flows

1 commission, the science advisory committee, and any applicable
2 basin and bay area stakeholders committee and basin and bay expert
3 science team.

4 SECTION 22. Section 11.329(g), Water Code, is amended to
5 read as follows:

6 (g) The commission may not assess costs under this section
7 against a holder of a non-priority hydroelectric right that owns or
8 operates privately owned facilities that collectively have a
9 capacity of less than two megawatts or against a holder of a water
10 right placed in the Texas Water Trust for a term of at least 20
11 years. [~~This subsection is not intended to affect in any way the~~
12 ~~fees assessed on a water right holder by the commission under~~
13 ~~Section 1.29(d), Chapter 626, Acts of the 73rd Legislature, Regular~~
14 ~~Session, 1993. For purposes of Section 1.29(d), Chapter 626, Acts~~
15 ~~of the 73rd Legislature, Regular Session, 1993, a holder of a~~
16 ~~non-priority hydroelectric right that owns or operates privately~~
17 ~~owned facilities that collectively have a capacity of less than two~~
18 ~~megawatts shall be assessed fees at the same rate per acre-foot~~
19 ~~charged to a holder of a non-priority hydroelectric right that owns~~
20 ~~or operates privately owned facilities that collectively have a~~
21 ~~capacity of more than two megawatts.~~]

22 SECTION 23. Section 11.404(e), Water Code, is amended to
23 read as follows:

24 (e) The court may not assess costs and expenses under this
25 section against:

26 (1) a holder of a non-priority hydroelectric right
27 that owns or operates privately owned facilities that collectively

1 have a capacity of less than two megawatts; or

2 (2) a holder of a water right placed in the Texas Water
3 Trust for a term of at least 20 years.

4 SECTION 24. Subchapter I, Chapter 11, Water Code, is
5 amended by adding Section 11.4531 to read as follows:

6 Sec. 11.4531. WATERMASTER ADVISORY COMMITTEE. (a) For
7 each river basin or segment of a river basin for which the executive
8 director appoints a watermaster under this subchapter, the
9 executive director shall appoint a watermaster advisory committee
10 consisting of at least nine but not more than 15 members. A member
11 of the advisory committee must be a holder of a water right or a
12 representative of a holder of a water right in the river basin or
13 segment of the river basin for which the watermaster is appointed.
14 In appointing members to the advisory committee, the executive
15 director shall consider:

16 (1) geographic representation;
17 (2) amount of water rights held;
18 (3) different types of holders of water rights and
19 users, including water districts, municipal suppliers, irrigators,
20 and industrial users; and

21 (4) experience and knowledge of water management
22 practices.

23 (b) An advisory committee member is not entitled to
24 reimbursement of expenses or to compensation.

25 (c) An advisory committee member serves a two-year term
26 expiring August 31 of each odd-numbered year and holds office until
27 a successor is appointed.

1 (d) The advisory committee shall meet within 30 days after
2 the date the initial appointments have been made and shall select a
3 presiding officer to serve a one-year term. The committee shall
4 meet regularly as necessary.

5 (e) The advisory committee shall:

6 (1) make recommendations to the executive director
7 regarding activities of benefit to the holders of water rights in
8 the administration and distribution of water to holders of water
9 rights in the river basin or segment of the river basin for which
10 the watermaster is appointed;

11 (2) review and comment to the executive director on
12 the annual budget of the watermaster operation; and

13 (3) perform other advisory duties as requested by the
14 executive director regarding the watermaster operation or as
15 requested by holders of water rights and considered by the
16 committee to benefit the administration of water rights in the
17 river basin or segment of the river basin for which the watermaster
18 is appointed.

19 SECTION 25. Sections 11.454 and 11.455, Water Code, are
20 amended to read as follows:

21 Sec. 11.454. DUTIES AND AUTHORITY OF THE WATERMASTER.
22 Section 11.327 applies to the duties and authority of a watermaster
23 appointed for a river basin or segment of a river basin under this
24 subchapter in the same manner as that section applies to the duties
25 and authority of a watermaster appointed for a water division under
26 Subchapter G ~~[A watermaster as the agent of the commission and under~~
27 ~~the executive director's supervision shall.]~~

1 ~~[(1) divide the water of the streams or other sources~~
2 ~~of supply of his segment or basin in accordance with the authorized~~
3 ~~water rights,~~

4 ~~[(2) regulate or cause to be regulated the controlling~~
5 ~~works of reservoirs and diversion works in time of water shortage,~~
6 ~~as is necessary because of the rights existing in the streams of his~~
7 ~~segment or basin, or as is necessary to prevent the waste of water~~
8 ~~or its diversion, taking, storage, or use in excess of the~~
9 ~~quantities to which the holders of water rights are lawfully~~
10 ~~entitled, and~~

11 ~~[(3) perform any other duties and exercise any~~
12 ~~authority directed by the commission].~~

13 Sec. 11.455. COMPENSATION AND EXPENSES OF WATERMASTER
14 [ASSESSMENTS]. (a) Section 11.329 applies to the payment of the
15 compensation and expenses of a watermaster appointed for a river
16 basin or segment of a river basin under this subchapter in the same
17 manner as that section applies to the payment of the compensation
18 and expenses of a watermaster appointed for a water division under
19 Subchapter G.

20 (b) The executive director shall deposit the assessments
21 collected under this section to the credit of the watermaster fund.

22 (c) Money deposited under this section to the credit of the
23 watermaster fund may be used only for the purposes specified by
24 Section 11.3291 with regard to the watermaster operation under this
25 subchapter with regard to which the assessments were collected ~~[The~~
26 ~~commission may assess the costs of the watermaster against all~~
27 ~~persons who hold water rights in the river basin or segment of the~~

1 ~~river basin under the watermaster's jurisdiction in accordance with~~
2 ~~Section 11.329 of this code].~~

3 SECTION 26. Subchapter F, Chapter 15, Water Code, is
4 amended by adding Section 15.4063 to read as follows:

5 Sec. 15.4063. ENVIRONMENTAL FLOWS FUNDING. The board may
6 authorize the use of money in the research and planning fund:

7 (1) to compensate the members of the Texas
8 Environmental Flows Science Advisory Committee established under
9 Section 11.02361 for attendance and participation at meetings of
10 the committee and for transportation, meals, lodging, or other
11 travel expenses associated with attendance at those meetings as
12 provided by the General Appropriations Act;

13 (2) for contracts with cooperating state and federal
14 agencies and universities and with private entities as necessary to
15 provide technical assistance to enable the Texas Environmental
16 Flows Science Advisory Committee and the basin and bay expert
17 science teams established under Section 11.02362 to perform their
18 statutory duties;

19 (3) to compensate the members of the expert science
20 teams created pursuant to Section 11.02362(i) for attendance and
21 participation at meetings of the teams and for transportation,
22 meals, lodging, or other travel expenses associated with attendance
23 at those meetings as provided by the General Appropriations Act;
24 and

25 (4) for contracts with political subdivisions
26 designated as representatives of stakeholder committees
27 established pursuant to Section 11.02362 to fund all or part of the

1 administrative expenses for conducting meetings of the stakeholder
2 committee or the associated expert science team.

3 SECTION 27. Section 15.7031, Water Code, is amended by
4 amending Subsection (c) and adding Subsection (e) to read as
5 follows:

6 (c) The dedication of any water rights placed in trust must
7 be reviewed and approved by the commission, in consultation with
8 the board, ~~[and]~~ the Parks and Wildlife Department, and the
9 Environmental Flows Commission. In addition, the Department of
10 Agriculture and the basin and bay area stakeholders committee and
11 basin and bay expert science team established under Section
12 11.02362 for the river basin and bay system to which the water right
13 pertains may provide input to the commission, as appropriate,
14 during the review and approval process for dedication of water
15 rights.

16 (e) While a water right is held in the trust, the water
17 authorized for beneficial use under the terms of the water right is
18 considered to be held for instream flows, water quality, fish and
19 wildlife habitat, bay and estuary inflows, or other environmental
20 uses without the need for a permit amendment. After the water right
21 is withdrawn in whole or in part from the trust, the use of the water
22 right or portion of the water right withdrawn must be in accordance
23 with the terms of the water right.

24 SECTION 28. Section 16.059(d), Water Code, is amended to
25 read as follows:

26 (d) The priority studies shall be completed not later than
27 December 31, 2014 ~~[2010]~~. The Parks and Wildlife Department, the

1 commission, and the board shall establish a work plan that
2 prioritizes the studies and that sets interim deadlines providing
3 for publication of flow determinations for individual rivers and
4 streams on a reasonably consistent basis throughout the prescribed
5 study period. Before publication, completed studies shall be
6 submitted for comment to the commission, the board, and the Parks
7 and Wildlife Department.

8 SECTION 29. Section 26.0135(h), Water Code, as amended by
9 Chapters 234 and 965, Acts of the 77th Legislature, Regular
10 Session, 2001, is reenacted and amended to read as follows:

11 (h) The commission shall apportion, assess, and recover the
12 reasonable costs of administering the water quality management
13 programs under this section from users of water and wastewater
14 permit holders in the watershed according to the records of the
15 commission generally in proportion to their right, through permit
16 or contract, to use water from and discharge wastewater in the
17 watershed. Irrigation water rights, ~~and~~ non-priority
18 hydroelectric rights of a water right holder that owns or operates
19 privately owned facilities that collectively have a capacity of
20 less than two megawatts, and water rights held in the Texas Water
21 Trust for terms of at least 20 years will not be subject to this
22 assessment. The cost to river authorities and others to conduct
23 water quality monitoring and assessment shall be subject to prior
24 review and approval by the commission as to methods of allocation
25 and total amount to be recovered. The commission shall adopt rules
26 to supervise and implement the water quality monitoring,
27 assessment, and associated costs. The rules shall ensure that

1 water users and wastewater dischargers do not pay excessive
2 amounts, that program funds are equitably apportioned among basins,
3 that a river authority may recover no more than the actual costs of
4 administering the water quality management programs called for in
5 this section, and that no municipality shall be assessed cost for
6 any efforts that duplicate water quality management activities
7 described in Section 26.177 [~~of this chapter~~]. The rules
8 concerning the apportionment and assessment of reasonable costs
9 shall provide for a recovery of not more than \$5,000,000 annually.
10 Costs recovered by the commission are to be deposited to the credit
11 of the water resource management account and may be used only to
12 accomplish the purposes of this section. The commission may apply
13 not more than 10 percent of the costs recovered annually toward the
14 commission's overhead costs for the administration of this section
15 and the implementation of regional water quality assessments. The
16 commission, with the assistance and input of each river authority,
17 shall file a written report accounting for the costs recovered
18 under this section with the governor, the lieutenant governor, and
19 the speaker of the house of representatives on or before December 1
20 of each even-numbered year.

21 SECTION 30. (a) This section takes effect only if this Act
22 takes effect immediately. If this Act does not take effect
23 immediately, this section has no effect.

24 (b) Sections 11.0236(d), (k), (l), and (m) and 11.0237(c),
25 Water Code, are repealed.

26 SECTION 31. Section 11.1491(b), Water Code, is repealed.

27 SECTION 32. (a) This section takes effect only if this Act

1 takes effect immediately. If this Act does not take effect
2 immediately, this section has no effect.

3 (b) The Study Commission on Water for Environmental Flows is
4 abolished on the effective date of this Act.

5 SECTION 33. (a) The governor, lieutenant governor, and
6 speaker of the house of representatives shall appoint the initial
7 members of the Environmental Flows Commission as provided by
8 Section 11.0236, Water Code, as amended or added by this Act, as
9 soon as practicable on or after the effective date of this Act.

10 (b) As soon as practicable after taking office, the initial
11 members of the Environmental Flows Commission shall appoint the
12 initial members of the Texas Environmental Flows Science Advisory
13 Committee as provided by Section 11.02361, Water Code, as added by
14 this Act. The terms of the initial members of the committee expire
15 March 1, 2010.

16 (c) The Environmental Flows Commission shall appoint the
17 members of each basin and bay area stakeholders committee as
18 provided by Section 11.02362, Water Code, as added by this Act. The
19 terms of the initial members of each committee expire March 1 of the
20 fifth year that begins after the year in which the initial
21 appointments are made.

22 (d) Each basin and bay area stakeholders committee shall
23 appoint the members of the basin and bay expert science team for the
24 river basin and bay system for which the committee is established as
25 provided by Section 11.02362, Water Code, as added by this Act. The
26 terms of the initial members of each team expire April 1 of the
27 fifth year that begins after the year in which the initial

1 appointments are made.

2 (e) The executive director of the Texas Commission on
3 Environmental Quality shall appoint the members of the watermaster
4 advisory committee under Section 11.4531, Water Code, as added by
5 this Act, for each river basin or segment of a river basin for which
6 the executive director appoints a watermaster under Subchapter I,
7 Chapter 11, Water Code. The terms of the initial members of each
8 committee expire August 31 of the first odd-numbered year that
9 begins after the year in which the initial appointments are made.

10 SECTION 34. The changes in law made by this Act relating to
11 a permit for a new appropriation of water or to an amendment to an
12 existing water right that increases the amount of water authorized
13 to be stored, taken, or diverted apply only to:

14 (1) water appropriated under a permit for a new
15 appropriation of water the application for which is pending with
16 the Texas Commission on Environmental Quality on the effective date
17 of this Act or is filed with the commission on or after that date; or

18 (2) the increase in the amount of water authorized to
19 be stored, taken, or diverted under an amendment to an existing
20 water right that increases the amount of water authorized to be
21 stored, taken, or diverted and the application for which is pending
22 with the Texas Commission on Environmental Quality on the effective
23 date of this Act or is filed with the commission on or after that
24 date.

25 SECTION 35. This Act takes effect immediately if it
26 receives a vote of two-thirds of all the members elected to each
27 house, as provided by Section 39, Article III, Texas Constitution.

C.S.H.B. No. 40

1 If this Act does not receive the vote necessary for immediate
2 effect, this Act takes effect November 1, 2005.

COMMITTEE REPORT

The Honorable Tom Craddick
Speaker of the House of Representatives

7/6/05
(date)

Sir:

We, your COMMITTEE ON NATURAL RESOURCES

to whom was referred H13 40 have had the same under consideration and beg to report back with the recommendation that it

- () do pass, without amendment.
- () do pass, with amendment(s).
- (X) do pass and be not printed; a Complete Committee Substitute is recommended in lieu of the original measure.
- (X) yes () no A fiscal note was requested.
- () yes (X) no A criminal justice policy impact statement was requested.
- () yes (X) no An equalized educational funding impact statement was requested.
- () yes (X) no An actuarial analysis was requested.
- () yes (X) no A water development policy impact statement was requested.
- () yes (X) no A tax equity note was requested.
- () The Committee recommends that this measure be sent to the Committee on Local and Consent Calendars.

For Senate Measures: House Sponsor _____

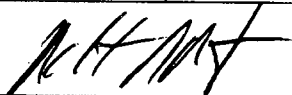
Joint Sponsors: _____ / _____ / _____

Co-Sponsors: _____

The measure was reported from Committee by the following vote:

	AYE	NAY	PNV	ABSENT
Puente, Chair	X			
Callegari, Vice-chair	X			
Bonnen	X			
Campbell	X			
Geren	X			
Hardcastle	X			
Hilderbran	X			
Hope				X
Laney				X

Total 7 aye
 0 nay
 0 present, not voting
 2 absent


CHAIR

BILL ANALYSIS

C.S.H.B. 40
By: Puente
Natural Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

C.S.H.B. 40 advances strategies to ensure adequate environmental flows and water infrastructure financing. C.S.H.B. 40 also authorizes state water that is set aside by the Texas Commission on Environmental Quality (TCEQ) to meet instream needs, as well as freshwater inflows to affected bays and estuaries. This legislation creates the Environmental Flows Commission (flows commission), in place of the Study Commission on Water for Environmental Flows (study commission) and changes the composition of the flows commission. The flows commission will evaluate options for providing adequate environmental flows, taking notice of the strong public policy imperative that exists in this state recognizing that environmental flows are important to the biological health of our public and private lands, streams and rivers, and bay and estuary systems.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Study Commission on Water for Environmental Flows is transferred to the Environmental Flows Commission in SECTION 7 of this bill. Rulemaking authority is expressly granted to the Environmental Flows Commission in SECTION 8 of this bill.

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 18 of this bill.

ANALYSIS

SECTION 1. Amends the heading to Section 5.506, Water Code, to read as follows:

Sec. 5.506. EMERGENCY SUSPENSION OF PERMIT CONDITION RELATING TO, AND EMERGENCY AUTHORITY TO MAKE AVAILABLE WATER SET ASIDE FOR, BENEFICIAL INFLOWS TO AFFECTED BAYS AND ESTUARIES AND INSTREAM USES.

SECTION 2. Amends Section 5.506, Water Code, by adding Subsection (a-1) and amending Subsections (b) and (c), as follows:

(a-1) Authorizes state water that is set aside by the Texas Commission on Environmental Quality (TCEQ) to meet the needs for freshwater inflows to affected bays, estuaries, and instream uses under Section 11.1471(a)(2) to be made available temporarily for other essential beneficial uses if TCEQ finds that an emergency exists that cannot practically be resolved in another way.

(b) Requires TCEQ to give written notice of the proposed action, rather than suspension, to the Texas Parks and Wildlife Department (TPWD) before TCEQ suspends a permit condition under Subsection (a) or makes water available temporarily under Subsection (a-1). Requires TCEQ to give TPWD an opportunity to submit comments on the proposed action, rather than suspension, for a period of 72 hours from receipt of the notice and requires TCEQ to consider those comments before issuing an order implementing the proposed action, rather than imposing suspension.

(c) Authorizes TCEQ to suspend a permit condition under Subsection (a) or make water available temporarily under Subsection (a-1) without notice except as required by Subsection (b).

SECTION 3. Amends Section 5.701(j), Water Code, to provide that a fee is not required for a water right that is deposited into the Texas Water Trust.

SECTION 4. Amends Section 11.002, Water Code, by adding Subdivisions (15), (16), (17), (18), and (19) to define "environmental flow analysis," "environmental flow regime," "environmental flow standards," "flows commission," and "science advisory committee."

SECTION 5. Amends Section 11.023(a), Water Code, to authorize state water to be appropriated, stored, or diverted for specific uses, to the extent that state water has not been set aside by TCEQ under Section 11.1471(a)(2) to meet downstream instream flow needs or freshwater inflow needs.

SECTION 6. Amends Section 11.0235, Water Code, by amending Subsections (c) and (e) and adding Subsections (d-1), (d-2), (d-3), (d-4), (d-5), and (f), as follows:

(c) Provides that the legislature has expressly required TCEQ, while balancing all other public interests to consider and, to the extent practicable, provide for the freshwater inflows and instream flows necessary to maintain the viability of the state's streams, rivers, bay, and estuary systems in TCEQ's regular granting of permits for the use of state waters. Requires all permit conditions relating to freshwater inflows to affected bays, estuaries, and instream flow needs, as an essential part of the state's environmental flows policy, to be subject to temporary suspension if necessary for water to be applied to essential beneficial uses during emergencies.

(d-1) Requires the state to have a process with specific timelines for prompt action to address environmental flow issues in the state's major basin and bay systems, especially those systems in which unappropriated water is still available, based on legislative findings that provide certainty in water management and development and provide adequate protection of the state's streams, rivers, bays, and estuaries.

(d-2) Sets forth legislative findings regarding basins in which water is available for appropriation and those in which unappropriated water is not available.

(d-3) Sets forth legislative findings regarding limitations on tools available to meet freshwater inflow needs for bays and estuaries, proposed state improvements, and the need for more extensive reviews and examinations of program details.

(d-4) Sets forth legislative findings regarding the management of water to meet instream flow and freshwater inflow needs, to be evaluated on a regular basis and adapted to reflect scientific improvements and future changes, and the development of management strategies for specific environmental flow needs.

(d-5) Sets forth legislative findings regarding recommendations for state action to protect instream flows and freshwater inflows through a regional consensus-based approach involving balanced representation throughout the state.

(e) Provides that pressures and demands on water resources require priorities to be effectively addressed by detailing the manner in which environmental flow standards are to be developed using the environmental studies and determine the manner in which those standards will be integrated into the regional water planning and water permitting process.

(f) Sets forth legislative acknowledgement of the need for effective implementation of the approach provided by this chapter in order to protect instream flows and freshwater inflows, thus requiring more effective water rights administration and enforcement systems than currently available.

SECTION 7. (a) Makes application of this section contingent upon this Act taking effect immediately.

(b) Amends the heading to Section 11.0236, Water Code, to read as follows:

Sec. 11.0236. ENVIRONMENTAL FLOWS COMMISSION.

(c) Amends Section 11.0236, Water Code, by amending Subsections (a)-(c), (e)-(j), (n), and (o), and adding Subsection (p), as follows:

(a) Sets forth the creation of the Environmental Flows Commission (flows commission), in place of the Study Commission on Water for Environmental Flows (study commission).

(b) Sets forth members of the flows commission. Deletes existing text requiring additional members serving on the study commission.

(c) Sets forth requirements for members appointed to positions under Subsection (b)(1). Deletes existing text regarding additional requirements for membership.

(e) Provides that each member of the flows commission serves at the will of the person who appointed the member.

(f) through (i) Makes conforming changes.

(j) Requires the flows commission, in evaluating the options for providing adequate environmental flows, to take notice of the strong public policy imperative that exists in this state recognizing that environmental flows are important to the biological health of our public and private lands, streams and rivers, and bay and estuary systems and are high priorities in the water management process. Requires the flows commission to specifically address ways that the ecological soundness of those systems will be ensured in the water administration, enforcement, and allocation process and appropriate methods to encourage persons voluntarily to convert reasonable amounts of existing water rights to use for environmental flow protection, temporarily or permanently. Makes conforming and nonsubstantive changes.

(n) Authorizes the flows commission to adopt rules, procedures, and policies as needed to administer this section, to implement its responsibilities, and to exercise its authority under Sections 11.02361 and 11.02362.

(o) Provides that Chapter 2110 (State Agency Advisory Committees), Government Code, does not apply to the size, composition, or duration of the flows commission.

(p) Requires the flows commission to issue and promptly deliver to specific government officials, not later than December 1, 2006, and every two years thereafter, copies of a report summarizing specific hearings, proposed legislation, progress made in the implementation of Sections 11.02361 and 11.02362, and any other findings and recommendations of the flows commission. Deletes existing text abolishing the study commission and providing for the expiration of this section.

SECTION 8. (a) Makes application of this section contingent upon this Act not taking effect immediately.

(b) Amends Subchapter B, Chapter 11, Water code, by adding Section 11.0236, as follows:

Sec. 11.0236. ENVIRONMENTAL FLOWS COMMISSION. (a) Creates the Environmental Flows Commission (flows commission).

(b) - (f) Sets forth terms, composition, and appointment procedures for members of the flows commission.

(g) Provides that a member of the flows commission is not entitled to receive compensation for service on the flows commission but is entitled to reimbursement of the travel expenses incurred by the member while conducting the business of the flows commission, as provided by the General Appropriations Act.

(h) Provides that the flows commission may accept gifts and grants.

(i) Requires TCEQ to provide staff support for the flows commission.

(j) Requires the flows commission to conduct public hearings and study public policy implications for balancing the demands on the water resources of the state resulting from a growing population with the requirements of the riverine, bay and estuary systems including granting permits for instream flows dedicated to environmental needs or bay and estuary inflows, use of the Texas Water Trust, and any other issues that the flows commission determines have importance and relevance to the protection of environmental flows. Requires the flows commission, in evaluating the options for providing adequate environmental flows, to take notice of the strong public policy imperative that exists in this state recognizing that environmental flows are important to the biological health of our public and private lands, streams and rivers, and bay and estuary systems and are high priorities in the water management process. Requires the flows commission to specifically address certain issues.

(n) Authorizes the flows commission to adopt rules, procedures, and policies as needed to administer this section, to implement its responsibilities, and to exercise its authority under Sections 11.02361 and 11.02362.

(o) Provides that Chapter 2110 (State Agency Advisory Committee), Government Code, does not apply to the size, composition, or duration of the flows commission.

(p) Requires the flows commission to issue and promptly deliver to specific government officials, not later than December 1, 2006, and every two years thereafter, copies of a report summarizing specific hearings, proposed legislation, certain studies, progress made in the implementation of Sections 11.02361 and 11.02362, and any other findings and recommendations of the flows commission.

SECTION 9. Amends Subchapter B, Chapter 11, Water Code, by adding Sections 11.02361 and 11.02362, as follows:

Sec. 11.02361. TEXAS ENVIRONMENTAL FLOWS SCIENCE ADVISORY COMMITTEE. (a) Provides that the Texas Environmental Flows Science Advisory Committee (science advisory committee) consists of at least five but not more than nine members appointed by the flows commission.

(b) Requires the flows commission to appoint persons who will provide an objective perspective and diverse technical experience in specific fields pertinent to the evaluation of environmental flows to the science advisory committee.

(c) Provides that members of the science advisory committee serve five-year terms expiring March 1. Provides that a vacancy on the science advisory committee is filled by appointment by the co-presiding officers of the flows commission for the unexpired term.

(d) Provides that Chapter 2110, Government Code, does not apply to the size, composition, or duration of the science advisory committee.

(e) Requires the science advisory committee to serve as an independent scientific body to advise and make recommendations to the flows commission on issues relating to the science of environmental flow protection and develop recommendations to help provide overall direction, coordination, and consistency relating to specific issues concerning environmental flows.

(f) Requires TCEQ, TPWD, and the Texas Water Development Board (TWDB), to assist the flows commission in assessing the extent to which the recommendations of the science advisory committee are considered and implemented, to provide written reports to the flows commission, at intervals determined by the flows commission, that describe the actions taken by each agency in response to each recommendation, each recommendation not implemented, and reasons for it not being implemented.

Sec. 11.02362. DEVELOPMENT OF ENVIRONMENTAL FLOW REGIME RECOMMENDATIONS. (a) Requires the flows commission, no later than January 1, 2006, and for the purposes of this section, to define the geographical extent of each river basin and bay system in the state for the purpose of developing environmental flow regime recommendations under this section and adoption of environmental flow standards under Section 11.1471.

(b) Requires the flows commission to give priority in descending order to the following river basin and bay systems of the state for the purpose of developing environmental flow regime recommendations and adopting environmental flow standards:

(1) the river basin and bay system consisting of the Trinity and San Jacinto Rivers and Galveston Bay and the river basin and bay system consisting of the Sabine and Neches Rivers and Sabine Lake Bay;

(2) the river basin and bay system consisting of the Colorado and Lavaca Rivers and Matagorda and Lavaca Bays and the river basin and bay system consisting of the Guadalupe, San Antonio, and Aransas Rivers, and Copano, Aransas, and San Antonio Bays; and

(3) the river basin and bay system consisting of the Nueces River and Corpus Christi and Baffin Bays, the river basin and bay system consisting of the Rio Grande, the Rio Grande estuary, the Lower Laguna Madre, and the Brazos River and its associated bay and estuary system.

(c) Requires that for the river basin and bay systems listed in Subsection (b)(1):

(1) the flows commission appoint the basin and bay area stakeholders committee not later than January 1, 2006;

(2) the basin and bay area stakeholders committee establish a basin and bay expert science team not later than March 1, 2006;

(3) the basin and bay expert science team finalize environmental flow regime recommendations and submit them to the basin and bay area stakeholders committee, the flows commission, and TCEQ not later than March 1, 2007;

(4) the basin and bay area stakeholders committee submit to TCEQ its comments on and recommendations regarding the basin and bay expert science team's recommended environmental flow regime not later than September 1, 2007; and

(5) TCEQ adopt the environmental flow standards as provided by Section 11.1471 not later than September 1, 2008.

(d) Requires the flows commission to appoint the basin and bay area stakeholders committees for the river basin and bay systems listed in Subsection (b)(2), no later than September 1, 2006, and those river basin and bay systems listed in Subsection (b)(3) no later than September 1, 2007. Requires the flows commission to establish a schedule for the performance of the tasks listed in Subsection (c)(2)-(5) with regard to the river basin and bay systems listed in Subsection (b)(2) and (3) that will result in the adoption of environmental flow standards for that river basin and bay system by TCEQ, as soon as is reasonably possible. Requires each basin and bay area stakeholders committee and basin and bay expert science team for a river basin and bay system listed in Subsection (b)(2) or (3) to make recommendations to the flows commission with regard to the schedule applicable to that river basin and bay system. Requires the flows commission to consider the recommendations of the basin and bay area stakeholders committee and basin and bay expert science team, as well as coordinate with, and give appropriate consideration to the recommendations of, TCEQ, TPWD, and the TWDB in establishing the schedule.

(e) Requires the flows commission, for a river basin and bay system or a river basin that does not have an associated bay system in this state not listed in Subsection (b), to establish a schedule for the development of environmental flow regime recommendations and the adoption of environmental flow standards. Requires the flows commission to develop the schedule in consultation with TCEQ, TPWD, TWDB, and the pertinent basin and bay area stakeholders committee and basin and bay expert science team. Authorizes the flows commission, on its own initiative or on request, to modify a schedule established under this subsection to be more responsive to particular circumstances, local desires, changing conditions, or time-sensitive conflicts. Provides that this subsection does not prohibit an effort to develop information on environmental flow needs and ways in which those needs can be met by a voluntary consensus-building process, in a river basin and bay system for which the flows commission has not yet established a schedule for the development of environmental flow regime recommendations.

(f) Requires the flows commission to appoint a basin and bay area stakeholders committee for each river basin and bay system in this state for which a schedule for the development of environmental flow regime recommendations and the adoption of environmental flow standards is specified by or established under Subsection (c), (d), or (e). Provides that Chapter 2110, Government Code, does not apply to the size, composition, or duration of a basin and bay area stakeholders committee. Requires each committee to consist of at least 17 specific members representing appropriate enumerated stakeholders.

(g) Provides that members of a basin and bay area stakeholders committee serve five-year terms expiring March 1. Requires the remaining members of the committee, if a vacancy occurs on a committee, to appoint a member to serve the remainder of the unexpired term by majority vote.

(h) Requires meetings of the basin and bay area stakeholders committee to be open to the public.

(i) Requires each basin and bay area stakeholders committee to establish a basin and bay expert science team for the river basin and bay system for which the committee is established. Requires establishment of the basin and bay expert science team within six months of committee establishment. Provides that Chapter 2110, Government Code, does not apply to the size, composition, or duration of a basin and bay expert science team. Requires each basin and bay expert science team to be composed of technical experts with special expertise in the river basin and bay system or regarding the development of environmental flow regimes. Authorizes a person to serve as a member of more than one basin and bay expert science team at the same time.

(j) Provides that the members of the basin and bay expert science team serve five-year terms expiring April 1. Provides that a vacancy on a basin and bay expert science team is filled by appointment by the pertinent basin and bay area stakeholders committee to serve the remainder of the unexpired term.

(k) Requires the science advisory committee to appoint one of its members to serve as a liaison to each basin and bay expert science team to facilitate coordination and consistency in environmental flow activities throughout the state. Requires TCEQ, TPWD, and TWDB to provide technical assistance to each basin and bay expert science team including information about the studies conducted under Sections 16.058 (Collection of Bays and Estuaries Data: Conduct of Studies) and 16.059 (Collection of Instream Flow Data: Conduct of Studies), and authorizes them to serve as nonvoting members of the basin and bay expert science team to facilitate the development of environmental flow regime recommendations.

(l) Requires meetings of a basin and bay expert science team, where reasonably practicable, to be open to the public.

(m) Requires each basin and bay expert science team to develop environmental flow analyses and a recommended environmental flow regime for the river basin and bay system for which the team is established through a collaborative process designed to achieve a consensus. Requires the science team, in developing the analyses and recommendations, to consider all reasonably available science, without regard to the need for the water for other uses, and requires the recommendations to be based solely on the best science available. Requires any uses attributable to Mexican water flows, for the Rio Grande below Fort Quitman, to be excluded from environmental flow regime recommendations.

(n) Requires each basin and bay expert science team to submit its environmental flow analyses and environmental flow regime recommendations to the pertinent basin and bay area stakeholders committee, the flows commission, and TCEQ in accordance with the applicable schedule specified by or established under Subsection (c), (d), or (e). Prohibits the basin and bay area stakeholders committee and flows committee from changing the environmental flow analyses or environmental flow regime recommendations of the basin and bay expert science team.

(o) Requires each basin and bay area stakeholders committee to review the environmental flow analyses and environmental flow regime recommendations submitted by the committee's basin and bay expert science team and consider them in conjunction with other factors, including the present and future needs for water for other uses related to water supply planning in the pertinent river basin and bay system. Requires the basin and bay area stakeholders committee, for the Rio Grande, to also consider the water accounting requirements for any international water sharing treaty, minutes, and agreement applicable to the Rio Grande and the effects on allocation of water by the Rio Grande watermaster in the middle and lower Rio Grande. Prohibits the Rio Grande basin and bay expert science team from recommending any environmental flow regime that would result in a violation of a treaty or court decision. Requires the basin and bay area stakeholders committee to develop recommendations regarding environmental flow standards and strategies to meet the environmental flow standards and submit those recommendations to TCEQ and to the flows commission in accordance with the applicable schedule specified or established under Subsection (c), (d), or (e). Requires the basin and bay area stakeholders, in developing its recommendations, to operate on a consensus basis to the maximum extent possible.

(p) Requires each basin and bay area stakeholder committee, with the assistance of the pertinent basin and bay expert science team, in recognition of the

importance of adaptive management, after submitting its recommendations regarding environmental flow standards and strategies to meet the environmental flow standards to TCEQ, to prepare and submit a work plan for approval by the flows commission. Sets forth content requirements for the work plan.

(q) Requires the flows commission, with input from the science advisory committee, in accordance with the applicable schedule specified or established under Subsection (c), (d), or (e), to review the environmental flow analyses and environmental flow regime recommendations submitted by each basin and bay expert science team. Requires the flows commission, if appropriate, to submit comments on the analyses and recommendations to TCEQ for use by TCEQ in adopting rules under Section 11.1471. Requires comments to be submitted not later than six months after the date of receipt of the recommendations.

(r) Authorizes an estuary advisory council, in the event TCEQ, by permit or order, has established said council, to continue in full force and effect.

SECTION 10. (a) Makes application of this section contingent upon this Act taking effect immediately.

(b) Amends Sections 11.0237(a) and (b), Water Code, to authorize TCEQ to approve an application to amend an existing permit or certificate of adjudication to change the use or to add a use for instream flows dedicated to environmental needs of bay and estuary flows. Provides that in addition to specific sections previously listed, this section does not alter TCEQ's obligations under Sections 11.042(b) or (c), 11.1471, 11.150, and 11.152.

SECTION 11. (a) Makes application of this section contingent upon this Act not taking effect immediately.

(b) Amends Subchapter B, Chapter 11, Water Code, by adding Section 11.0237, as follows:

Sec. 11.0237. WATER RIGHTS FOR INSTREAM FLOWS DEDICATED TO ENVIRONMENTAL NEEDS OR BAY AND ESTUARY INFLOWS. (a) Prohibits TCEQ from issuing a new permit for instream flows dedicated to environmental needs or bay and estuary inflows. Authorizes TCEQ to approve an application to amend an existing permit or certificate of adjudication to change the use to or add a use for instream flows dedicated to environmental needs or bay and estuary inflows.

(b) Provides that this section does not alter TCEQ's obligations under certain sections of the water code.

SECTION 12. Amends Section 11.082(b), Water Code, to authorize the state to seek those penalties [described in Subsection (a)] regardless of whether a watermaster has been appointed for the water division, river basin, or segment of a river basin where the unlawful use [of state water] is alleged to have occurred. Makes a nonsubstantive change.

SECTION 13. Amends Section 11.0841, Water Code, by adding Subsection (c), as follows:

(c) Provides that for purposes of this section, TPWD has:

(1) the rights of a holder of a water right that is held in the Texas Water Trust, including the right to file suit in a civil court to prevent the unlawful use of such a right; and

(2) the right to act in the same manner that a holder of a water right may act to protect the holder's rights in seeking to prevent any person from appropriating water in violation of a set-aside established by the commission under Section 11.1471 to meet instream flow needs or freshwater inflow needs; and

(3) the right to file suit in a civil court to prevent the unlawful use of a set-aside established under Section 11.1471.

SECTION 14. Amends Section 11.0842(a), Water Code, to authorize TCEQ to assess an administrative penalty for a violation relating to a water division or a river basin or segment of a river basin regardless of whether a watermaster has been appointed for the water division or river basin or segment of the river basin. Makes a nonsubstantive change.

SECTION 15. Amends Section 11.0843(a), Water Code, to authorize the executive director of TCEQ, or a person designated by the executive director, including a watermaster or the watermaster's deputy, upon witnessing a violation of this chapter, a rule, order, or a water right issued under this chapter, to issue the alleged violator a filed citation alleging that a violation has occurred and providing the alleged violator with specific options. Makes nonsubstantive changes.

SECTION 16. Amends Section 11.134(b), Water Code, to require TCEQ to grant the application only if the proposed appropriation considers any applicable environmental flow standards established under Section 11.1471. Makes a nonsubstantive change.

SECTION 17. Amends Section 11.147, Water Code, by amending Subsections (b), (d), and (e) and adding Subsections (e-1), (e-2), and (e-3), as follows:

(b) Requires TCEQ, for permits issued within an area that is 200 river miles of the coast, to commence from the mouth of the river thence inland, to include in the permit any conditions considered necessary to maintain freshwater inflows to any affected bay and estuary system, to the extent practicable when considering all public interests and the studies mandated by Section 16.058 as evaluated under Section 11.1491. Deletes existing text regarding conditions necessary to maintain beneficial inflows.

(d) Requires TCEQ, in determining what conditions to include in the permit under this subsection, to consider the studies mandated by Section 16.059 and any water quality assessment performed under Section 11.150.

(e) Requires TCEQ, in determining what conditions to include in the permit under this subsection, to consider any assessment performed under Section 11.152.

(e-1) Requires any permit for a new appropriation of water or an amendment to an existing water right that increases the amount of water authorized to be stored, taken, or diverted to include a provision allowing TCEQ to adjust the conditions included in the permit or water right to provide for protection of instream flows or freshwater inflows. Prohibits the provision, with respect to an amended water right, from allowing the commission to adjust a condition of amendment other than a condition that applies only to the increase in the amount of water to be stored, taken, or diverted authorized by the amendment. Provides that this subsection does not affect an appropriation of or an authorization to store, take or divert water under a permit or amendment to a water right issued before November 1, 2005. Requires TCEQ to adjust the conditions upon determining, through an expedited public comment process, that such an adjustment is appropriate to achieve compliance with applicable environmental flow standards adopted under Section 11.1471. Provides that the adjustment:

(1) in combination with any previous adjustments made under this subsection, is prohibited from increasing the amount of the pass-through or release requirement for the protection of instream flows or freshwater inflows by more than 12.5 percent of the annualized total of that requirement contained in the permit as issued or of that requirement contained in the amended water right and applicable only to the increase in the amount of water authorized to be stored, taken, or diverted under the amended water right.

(2) is required to be based on appropriate consideration of the priority dates and diversion locations of any other water rights grants in the same river basin that are subject to adjustment under this subsection; and

(3) is required to be based on appropriate consideration of any voluntary contributions to the Texas Water Trust that contribute toward meeting the environmental flows standards.

(e-2) Provides that any water right holder making a contribution described by Subsection (e-1)(3) is entitled to appropriate credit of such benefits against adjustment of the holder's water right pursuant to Subdivision Subsection (e-1)(1).

(e-3) Requires TCEQ, notwithstanding Subsections (b)-(e), for the purpose of determining the environmental flow conditions necessary to maintain freshwater inflows to an affected bay and estuary system, existing instream uses and water quality of a stream or river, or fish and aquatic wildlife habitats, to apply any applicable environmental flow standard, including environmental flow set-aside, adopted under Section 11.1471 instead of considering the factors specified by those subsections.

SECTION 18. Amends Subchapter D, Chapter 11, Water Code, by adding Section 11.1471, as follows:

Sec. 11.1471. ENVIRONMENTAL FLOW STANDARDS AND SET-ASIDES. (a) Requires TCEQ, by rule, to:

(1) adopt appropriate environmental flow standards for each river basin and bay system in this state that are adequate to support a sound ecological environment, to the maximum extent reasonable considering other public interests and other relevant factors;

(2) establish an amount of unappropriated water, if available, to be set aside to satisfy the environmental flow standards to the maximum extent reasonable when considering human water needs; and

(3) establish procedures for implementing an adjustment of the conditions included in a permit or an amended water right as provided by Section 11.147(e-1) and 11.147(e-2).

(b) Requires TCEQ, in adopting environmental flow standards for a river basin and bay system under Subsection (a)(1), to consider specific factors regarding the definition of the geographical extent of the river basin and bay system and the definition and designation of the river basin by the board, schedule for the adoption of environmental flow standards, the environmental flow analyses and the recommended environmental flow regime developed by the applicable basin and bay expert science team, recommendations and strategies of the applicable basin and bay area stakeholder committee, specific characteristics of the river basin and bay system, economic factors, the human and other competing water needs in the river basin and bay system, reasonably available scientific information, and any other appropriate information.

(c) Requires environmental flow standards adopted under Subsection (a)(1) to consist of a schedule of flow quantities, reflecting seasonal and yearly fluctuations that may vary geographically by specific location in a river basin and bay system.

(d) Prohibits TCEQ, as provided by Section 11.023, from issuing a permit for a new appropriation or an amendment to an existing water right that increases the amount of water authorized to be stored, taken, or diverted if the issuance of the permit or amendment would impair an environmental flow set-aside established under Subsection (a)(2). Requires a permit for a new appropriation or an amendment to an existing water right that increases the amount of water authorized to be stored, taken, or diverted that is issued after the adoption of an applicable environmental flow set-aside to contain appropriate conditions to ensure protection of the environmental flow set-aside.

(e) Requires an environmental flow set-aside established under Subsection (a)(2) for a river basin and bay system other than the middle and lower Rio Grande to be assigned a priority date corresponding to the date TCEQ receives environmental flow regime recommendations from the applicable basin and bay expert science team and be included in the appropriate water availability models in connection with an application for a permit for a new appropriation or for an amendment to an existing water right that increases the amount of water authorized to be stored, taken, or diverted.

(f) Authorizes an environmental flow standard or environmental flow set-aside adopted under Subsection (a) to be altered by TCEQ in a rulemaking process undertaken in accordance with a schedule established by TCEQ. Prohibits TCEQ's schedule from providing for the rulemaking process to occur more frequently than once every 10 years unless the applicable work plan approved by the flows commission under Section 11.02362(p) provides for a periodic review under that section to occur more frequently. Authorizes TCEQ, in that event, to provide for the rulemaking process to be undertaken in conjunction with the periodic review upon determining that schedule to be appropriate.

SECTION 19. Amends the heading to Section 11.148, Water Code, to read as follows:

Sec. 11.148. EMERGENCY SUSPENSION OF PERMIT CONDITIONS AND EMERGENCY AUTHORITY TO MAKE AVAILABLE WATER SET ASIDE FOR ENVIRONMENTAL FLOWS.

SECTION. 20. Amends Section 11.148, Water Code, by adding Subsection (a-1) and amending Subsections (b) and (c), as follows:

(a-1) Authorizes state water that is set aside by TCEQ to meet the needs for freshwater inflows to affected bays and estuaries and instream uses under Section 11.1471(a)(2) to be made available temporarily for other essential beneficial uses, if TCEQ finds that an emergency exists that cannot practically be resolved in another way.

(b) Requires TCEQ, before suspending a permit condition under Subsection (a) or making water available temporarily under Subsection (a-1), to give written notice to TPWD of the proposed action, rather than suspension. Requires TCEQ to give TPWD an opportunity to submit comments on the proposed action within 72 hours from the time TCEQ is required to consider those comments before issuing its order implementing the proposed action. Makes conforming changes.

(c) Authorizes TCEQ to suspend the permit condition under Subsection (a) or make water available temporarily under Subsection (a-1) without notice to any other interested party other than TPWD as provided by Subsection (b).

SECTION 21. Amends Section 11.1491(a), Water Code, to require publication of reports completed under this section to be submitted for comment to TCEQ, TPWD, the flows commission, the science advisory committee, and any applicable basin and bay area stakeholders committee and basin and bay expert science team. Makes conforming and nonsubstantive changes.

SECTION 22. Amends Section 11.329(g), Water Code, to prohibit TCEQ from assessing costs under this section against a holder of a water right placed in the Texas Water Trust for a term of at least 20 years. Deletes existing text regarding this subsection affecting the fees assessed on a water right holder by TCEQ under specific chapters.

SECTION 23. Amends Section 11.404(e), Water Code, to prohibit the court from assessing costs and expenses under this section against a holder of a water right placed in the Texas Water Trust for a term of at least 20 years.

SECTION 24. Amends Subchapter I, Chapter 11, Water Code, by adding Section 11.4531, as follows:

C.S.H.B. 40 79(1)

Sec. 11.4531. WATERMASTER ADVISORY COMMITTEE. (a) Requires the executive director of TCEQ, for each river basin or segment of a river basin for which the executive director appoints a watermaster under this subchapter, to appoint a watermaster advisory committee consisting of at least nine but not more than 15 members. Requires a member of the advisory committee to be a holder of a water right or a representative of a holder of a water right in the river basin or segment of the river basin for which the watermaster is appointed. Requires the executive director, in appointing members to the advisory committee, to consider geographic representation, amount of water rights held, different types of holders of water rights and users, including water districts, municipal suppliers, irrigators, and industrial users, and experience and knowledge of water management practices.

(b) Provides that an advisory committee member is not entitled to reimbursement of expenses or to compensation.

(c) Provides that an advisory committee member serves a two-year term expiring August 31 of each odd-numbered year and holds office until a successor is appointed.

(d) Requires the advisory committee to meet within 30 days after the date the initial appointments have been made and to select a presiding officer to serve a one-year term. Requires the committee to meet regularly as necessary.

(e) Requires the advisory committee to make specific recommendations, reviews, and comments, and perform other advisory duties to the executive director of TCEQ.

SECTION 25. Amends Sections 11.454 and 11.455, Water Code, as follows:

Sec. 11.454. DUTIES AND AUTHORITY OF THE WATERMASTER. Provides that Section 11.327 applies to the duties and authority of a watermaster appointed for a river basin or segment of a river basin under this subchapter in the same manner as the section applies to the duties and authority of a watermaster appointed for a water division under Subchapter G. Deletes existing text regarding duties of a watermaster.

Sec. 11.455. New heading: COMPENSATION AND EXPENSES OF WATERMASTER. (a) Provides that Section 11.329 applies to the payment of the compensation and expenses of a watermaster appointed for a river basin or segment of a river basin under this subchapter in the same manner as that section applies to the payment of the compensation and expenses of a watermaster appointed for a water division under Subchapter G.

(b) Requires the executive director of TCEQ to deposit the assessments collected under this section to the credit of the watermaster fund.

(c) Authorizes money deposited under this section to the credit of the watermaster fund to be used only for the purposes specified by Section 11.3291 with regard to the watermaster operation under this subchapter with regard to which the assessments were collected. Deletes existing text authorizing TCEQ to assess the costs of the watermaster against all persons who hold water rights in the river basin or segment of the river basin under the watermaster's jurisdiction.

SECTION 26. Amends Subchapter F, Chapter 15, Water Code, by adding Section 15.4063, as follows:

Sec. 15.4063. ENVIRONMENTAL FLOWS FUNDING. Authorizes TWDB to authorize the use of money in the research and planning fund for specific compensations and contracts.

SECTION 27. Amends Section 15.7031, Water Code, by amending Subsection (c) and adding Subsection (e), as follows:

(c) Requires the dedication of any water rights placed in trust to be reviewed and approved by TCEQ, in consultation with TWDB, TPWD, and the flows commission. Authorizes the Department of Agriculture and the basin and bay area stakeholders committee and basin and bay expert science team established under Section 11.02362 for the river basin and bay system to which the water right pertains to provide input to TCEQ, as appropriate, during the review and approval process for dedication of water rights.

(e) Provides that while a water right is held in the trust, the water authorized for beneficial use under the terms of the water right is considered to be held for instream flows, water quality, fish and wildlife habitat, bay and estuary inflows, or other environmental uses without the need for a permit amendment. Requires the use of the water right or portion of the water right withdrawn, after the water right is withdrawn in whole or in part from the trust, to be in accordance with the terms of the water right.

SECTION 28. Amends Section 16.059(d), Water Code, to require the priority studies to be completed not later than December 31, 2014, rather than 2010.

SECTION 29. Reenacts and amends Section 26.0135(h), Water Code, as amended by Chapters 234 and 965, Acts of the 77th Legislature, Regular Session, 2001, as follows:

(h) Provides that irrigation water rights, non-priority hydroelectric rights of a water right holder that owns or operates privately owned facilities that collectively have a capacity of less than two megawatts, and water rights held in the Texas Water Trust for terms of at least 20 years will not be subject to the assessment [to recover the costs of administering water quality management programs]. Makes nonsubstantive changes.

SECTION 30. (a) Makes application of this section contingent upon this Act taking effect immediately.

(b) Repealer: Sections 11.0236(d) (referring to member appointments under Subsection (b)(3)); (k) (referring to duties of study commission); (l) (referring to study commission's report summary); (m) (referring to delivery of copies to members of the legislature); and Section 11.0237(c) (referring to expiration date of section), Water Code.

SECTION 31. Repealer: Section 11.1491(b) (referring to creation and establishment of advisory council for data collection and studies), Water Code.

SECTION 32. (a) Makes application of this section contingent upon this Act taking effect immediately.

(b) Abolishes the Study Commission on Water for Environmental Flows on the effective date of this Act.

SECTION 33. (a) Requires the governor, lieutenant governor, and speaker of the house of representatives to appoint the initial members of the Environmental Flows Commission as provided by Section 11.0236, Water Code, as amended by this article, as soon as practicable on or after the effective date of this Act.

(b) Requires the initial members of the Environmental Flows Commission, as soon as practicable after taking office, to appoint the initial members of the Texas Environmental Flows Science Advisory Committee as provided by Section 11.02361, Water Code, as added by this Act. Provides that the terms of the initial members of the committee expire on March 1, 2010.

(c) Requires the Environmental Flows Commission to appoint the members of each basin and bay area stakeholders committee as provided by Section 11.02362, Water Code, as added by this Act. Provides that the terms of the initial members of each

committee expire March 1 of the fifth year that begins after the year in which the initial appointments are made.

(d) Requires each basin and bay area stakeholders committee to appoint the members of the basin and bay expert science team for the river basin and bay system for which the committee is established as provided by Section 11.02362, Water Code, as added by this Act. Provides that the terms of the initial members of each committee expire March 1 of the fifth year that begins after the year in which the initial appointments are made.

(e) Requires the executive director of TCEQ to appoint the members of the watermaster advisory committee under Section 11.4531, Water Code, as added by this Act, for each river basin or segment of a river basin for which the executive director appoints a watermaster under Subchapter I, Chapter 11, Water Code. Provides that the terms of the initial members of the committee expire August 31 of the first odd-numbered year that begins after the year in which the initial appointments are made.

SECTION 34. Provides that the changes in law made by this article relating to a permit for a new appropriation of water or to an amendment to an existing water right that increases the amount of water authorized to be stored, taken, or diverted apply only under certain circumstances.

SECTION 35. Effective date: upon passage or November 1, 2005.

EFFECTIVE DATE

Upon passage or November 1, 2005.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B. 40 provides for immediate effect if the Act receives the necessary vote under the provisions of Article III, Texas Constitution. If the Act does not receive the necessary vote, the Act takes effect November 1, 2005. As filed, the bill would take effect November 1, 2005.

In addition, C.S.H.B. 40 sets out certain alternate provisions re-enacting sections of the Water Code that would expire prior to the effective date of the Act, depending on whether or not the Act takes immediate effect or takes effect November 1, 2005. The added sections are as follows:

SECTION 8. (a) Makes application of this section contingent upon this Act not taking effect immediately.

(b) Amends Subchapter B, Chapter 11, Water code, by adding Section 11.0236, as follows:

Sec. 11.0236. ENVIRONMENTAL FLOWS COMMISSION. (a) Creates the Environmental Flows Commission (flows commission).

(b) - (f) Sets forth terms, composition, and appointment procedures for members of the flows commission.

(g) Provides that a member of the flows commission is not entitled to receive compensation for service on the flows commission but is entitled to reimbursement of the travel expenses incurred by the member while conducting the business of the flows commission, as provided by the General Appropriations Act.

(h) Provides that the flows commission may accept gifts and grants.

(i) Requires TCEQ to provide staff support for the flows commission.

(j) Requires the flows commission to conduct public hearings and study public policy implications for balancing the demands on the water resources of the state

resulting from a growing population with the requirements of the riverine, bay and estuary systems including granting permits for instream flows dedicated to environmental needs or bay and estuary inflows, use of the Texas Water Trust, and any other issues that the flows commission determines have importance and relevance to the protection of environmental flows. Requires the flows commission, in evaluating the options for providing adequate environmental flows, to take notice of the strong public policy imperative that exists in this state recognizing that environmental flows are important to the biological health of our public and private lands, streams and rivers, and bay and estuary systems and are high priorities in the water management process. Requires the flows commission to specifically address certain issues.

(n) Authorizes the flows commission to adopt rules, procedures, and policies as needed to administer this section, to implement its responsibilities, and to exercise its authority under Sections 11.02361 and 11.02362.

(o) Provides that Chapter 2110 (State Agency Advisory Committee), Government Code, does not apply to the size, composition, or duration of the flows commission.

(p) Requires the flows commission to issue and promptly deliver to specific government officials, not later than December 1, 2006, and every two years thereafter, copies of a report summarizing specific hearings, proposed legislation, certain studies, progress made in the implementation of Sections 11.02361 and 11.02362, and any other findings and recommendations of the flows commission.

SECTION 11. (a) Makes application of this section contingent upon this Act not taking effect immediately.

(b) Amends Subchapter B, Chapter 11, Water Code, by adding Section 11.0237, as follows:

Sec. 11.0237. WATER RIGHTS FOR INSTREAM FLOWS DEDICATED TO ENVIRONMENTAL NEEDS OR BAY AND ESTUARY INFLOWS. (a) Prohibits TCEQ from issuing a new permit for instream flows dedicated to environmental needs or bay and estuary inflows. Authorizes TCEQ to approve an application to amend an existing permit or certificate of adjudication to change the use to or add a use for instream flows dedicated to environmental needs or bay and estuary inflows.

(b) Provides that this section does not alter TCEQ's obligations under certain sections of the water code.

SUMMARY OF COMMITTEE ACTION

HB 40

July 6, 2005

upon final adjourn./recess

Considered in formal meeting

Committee substitute considered in committee

Reported favorably as substituted

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 79TH LEGISLATURE 1st CALLED SESSION - 2005

July 7, 2005

TO: Honorable Robert Puente, Chair, House Committee on Natural Resources

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: HB40 by Puente (Relating to the management of the water resources of the state, including the protection of instream flows and freshwater inflows.), **Committee Report 1st House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for HB40, Committee Report 1st House, Substituted: a negative impact of (\$3,155,387) through the biennium ending August 31, 2007.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2006	(\$1,301,988)
2007	(\$1,853,399)
2008	(\$2,033,309)
2009	(\$2,092,999)
2010	(\$2,045,999)

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from GENERAL REVENUE FUND 1	Change in Number of State Employees from FY 2005
2006	(\$1,301,988)	8.3
2007	(\$1,853,399)	13.0
2008	(\$2,033,309)	16.0
2009	(\$2,092,999)	16.0
2010	(\$2,045,999)	16.0

Fiscal Analysis

The bill would provide that existing water rights could be converted temporarily or permanently to use for environmental flow protection. The bill would replace the Study Commission on Water for Environmental Flows to the Texas Environmental Flows Commission (TEFC). The TCEQ would continue to provide staff support to the modified TEFC. The TEFC would develop flow regime recommendations based on a priority schedule by river basin. The bill would create the Texas Environmental Flows Science Advisory Committee (TEFSAC) and the Basin and Bay Area Stakeholders Committee (BBASC). The TCEQ, the Texas Water Development Board (TWDB), and the Texas Parks and Wildlife Department (TPWD) would be responsible for coordinating with the TEFC, TEFSAC, and the BBASC, providing reports regarding the groups' recommendations, and providing technical assistance.

The bill would allow the TWDB to use money in the research and planning fund of the Water Assistance Fund No. 480 to compensate members of the TEFSAC and the Bay and Basin Expert Science Teams (BBEST) for meeting expenses. It would also allow the TWDB to pay contract costs for technical assistance to TFEC advisory committees and the BBESTs and costs incurred by political subdivisions designated as representatives of the BBASC.

The bill would take effect immediately if it receives approval in both houses of the Legislature. Otherwise, it would take effect November 1, 2005.

Methodology

To provide technical support to the committees established in the bill, complete hydrological modeling, geographic information systems applications related to instream flows, and to evaluate economic factors, 6.0 additional FTEs and related costs are expected to be needed by the TCEQ. In addition, the TCEQ would have contract service costs of \$250,000 per year to upgrade and maintain water availability models.

The TWDB also expects to need additional staff and related costs to provide data and expertise to the committees established in the bill, as well as funding for costs incurred by the TEFSAC, BBEST, as well as administrative costs for designated political subdivisions and studies relating to bays and estuaries. The agency expects that the number of FTEs needed would increase from 2.0 in fiscal year 2006 to 8.0 FTEs in fiscal year 2008. The TWDB expects costs not related to FTEs to total between \$675,000 to \$1,025,000 per fiscal year for duties prescribed in the bill.

No significant fiscal implications to the TPWD are anticipated to result from the bill's provisions relating to the agency's coordination with newly created councils and committees.

This estimate assumes the bill would take effect on November 1, 2005. Costs and FTEs in fiscal year 2006 have been adjusted to reflect that the bill would only be effective during 10 of 12 months of the fiscal year. If the bill were to take effect immediately, the costs to the TCEQ and Water Development Board would be higher. However, that difference is not expected to be significant.

Local Government Impact

Councils and committees created, expanded or modified by the bill could incur administrative costs. However, these costs are not expected to be significant, since state agencies are required to provide technical and staff support to these entities.

Source Agencies: 580 Water Development Board, 582 Commission on Environmental Quality, 304 Comptroller of Public Accounts, 802 Parks and Wildlife Department

LBB Staff: JOB, DLBa, SD, WK, ZS, TL

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 79TH LEGISLATURE 1st CALLED SESSION - 2005

July 5, 2005

TO: Honorable Robert Puente, Chair, House Committee on Natural Resources

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: HB40 by Puente (Relating to the management of the water resources of the state, including the protection of instream flows and freshwater inflows.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB40, As Introduced: a negative impact of (\$3,155,387) through the biennium ending August 31, 2007.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2006	(\$1,301,988)
2007	(\$1,853,399)
2008	(\$2,033,309)
2009	(\$2,092,999)
2010	(\$2,045,999)

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from GENERAL REVENUE FUND 1	Change in Number of State Employees from FY 2005
2006	(\$1,301,988)	8.3
2007	(\$1,853,399)	13.0
2008	(\$2,033,309)	16.0
2009	(\$2,092,999)	16.0
2010	(\$2,045,999)	16.0

Fiscal Analysis

The bill would provide that existing water rights could be converted temporarily or permanently to use for environmental flow protection. The bill would replace the Study Commission on Water for Environmental Flows to the Texas Environmental Flows Commission (TEFC). The TCEQ would continue to provide staff support to the modified TEFC. The TEFC would develop flow regime recommendations based on a priority schedule by river basin. The bill would create the Texas Environmental Flows Science Advisory Committee (TEFSAC) and the Basin and Bay Area Stakeholders Committee (BBASC). The TCEQ, the Texas Water Development Board (TWDB), and the Texas Parks and Wildlife Department (TPWD) would be responsible for coordinating with the TEFC, TEFSAC, and the BBASC, providing reports regarding the groups' recommendations, and providing technical assistance.

The bill would allow the TWDB to use money in the research and planning fund of the Water Assistance Fund No. 480 to compensate members of the TEFSAC and the Bay and Basin Expert Science Teams (BBEST) for meeting expenses. It would also allow the TWDB to pay contract costs for technical assistance to TFEC advisory committees and the BBESTs and costs incurred by political subdivisions designated as representatives of the BBASC.

The bill would take effect on November 1, 2005.

Methodology

To provide technical support to the committees established in the bill, complete hydrological modeling, geographic information systems applications related to instream flows, and to evaluate economic factors, 6.0 additional FTEs and related costs are expected to be needed by the TCEQ. In addition, the TCEQ would have contract service costs of \$250,000 per year to upgrade and maintain water availability models.

The TWDB also expects to need additional staff and related costs to provide data and expertise to the committees established in the bill, as well as funding for costs incurred by the TEFSAC, BBEST, as well as administrative costs for designated political subdivisions and studies relating to bays and estuaries. The agency expects that the number of FTEs needed would increase from 2.0 in fiscal year 2006 to 8.0 FTEs in fiscal year 2008. The TWDB expects costs not related to FTEs to total between \$675,000 to \$1,025,000 per fiscal year for duties prescribed in the bill.

No significant fiscal implications to the TPWD are anticipated to result from the bill's provisions relating to the agency's coordination with newly created councils and committees.

Costs and FTEs in fiscal year 2006 have been adjusted to reflect that the bill would only be effective during 10 of 12 months of the fiscal year.

Local Government Impact

Councils and committees created, expanded or modified by the bill could incur administrative costs. However, these costs are not expected to be significant, since state agencies are required to provide technical and staff support to these entities.

Source Agencies: 304 Comptroller of Public Accounts, 580 Water Development Board, 582 Commission on Environmental Quality, 802 Parks and Wildlife Department

LBB Staff: JOB, DLBa, SD, WK, ZS, TL

H.B. No. 40

By Robert R. Prentice

A BILL TO BE ENTITLED
AN ACT

relating to the management of the water resources of the state, including the protection of instream flows and freshwater inflows.

JUN 23 2005 Filed with the Chief Clerk

JUN 27 2005 Read first time and referred to Committee on Natural Resources

JUL 06 2005 Reported favorably ~~(as amended)~~
(as substituted)

JUL 12 2005 Sent to Committee on (Calendars)
~~(Natural Resources Committee)~~

_____ Read second time (comm. subst.) (amended); passed to third reading (failed) by a (non-record vote)
(record vote of _____ yeas, _____ nays, _____ present, not voting)

_____ Constitutional rule requiring bills to be read on three several days suspended (failed to suspend)
by a vote of _____ yeas, _____ nays, _____ present, not voting

_____ Read third time (amended); finally passed (failed to pass) by a (non-record vote)
(record vote of _____ yeas, _____ nays, _____ present, not voting)

_____ Engrossed

_____ Sent to Senate

CHIEF CLERK OF THE HOUSE

OTHER HOUSE ACTION:

_____ Received from the House

_____ Read and referred to Committee on _____

_____ Reported favorably _____

_____ Reported adversely, with favorable Committee Substitute; Committee Substitute read first time

_____ Ordered not printed

_____ Laid before the Senate

_____ Senate and Constitutional Rules to permit consideration suspended by (unanimous consent)
(_____ yeas, _____ nays)

_____ Read second time, _____, and passed to third reading by (unanimous consent)
(a viva voce vote)
(_____ yeas, _____ nays)

_____ Senate and Constitutional 3 Day Rules suspended by a vote of _____ yeas, _____ nays

_____ Read third time, _____, and passed by a (viva voce vote)
(_____ yeas, _____ nays)

_____ Returned to the House

SECRETARY OF THE SENATE

OTHER SENATE ACTION:

_____ Returned from the Senate (as substituted)
(with amendments)

_____ House concurred in Senate amendments by a (non-record vote)
(record vote of _____ yeas, _____ nays, _____ present, not voting)

_____ House refused to concur in Senate amendments and requested the appointment of a conference committee
by a (non-record vote) (record vote of _____ yeas, _____ nays, _____ present, not voting)

_____ House conferees appointed: _____, Chair; _____,
_____, _____, _____

_____ Senate granted House request. Senate conferees appointed: _____, Chair;
_____, _____, _____

_____ Conference committee report adopted (rejected) by the House by a (non-record vote)
(record vote of _____ yeas, _____ nays, _____ present, not voting)

_____ Conference committee report adopted (rejected) by the Senate by a (viva voce vote)
(record vote of _____ yeas, _____ nays)

05 JUL 11 PM 7:16
HOUSE OF REPRESENTATIVES